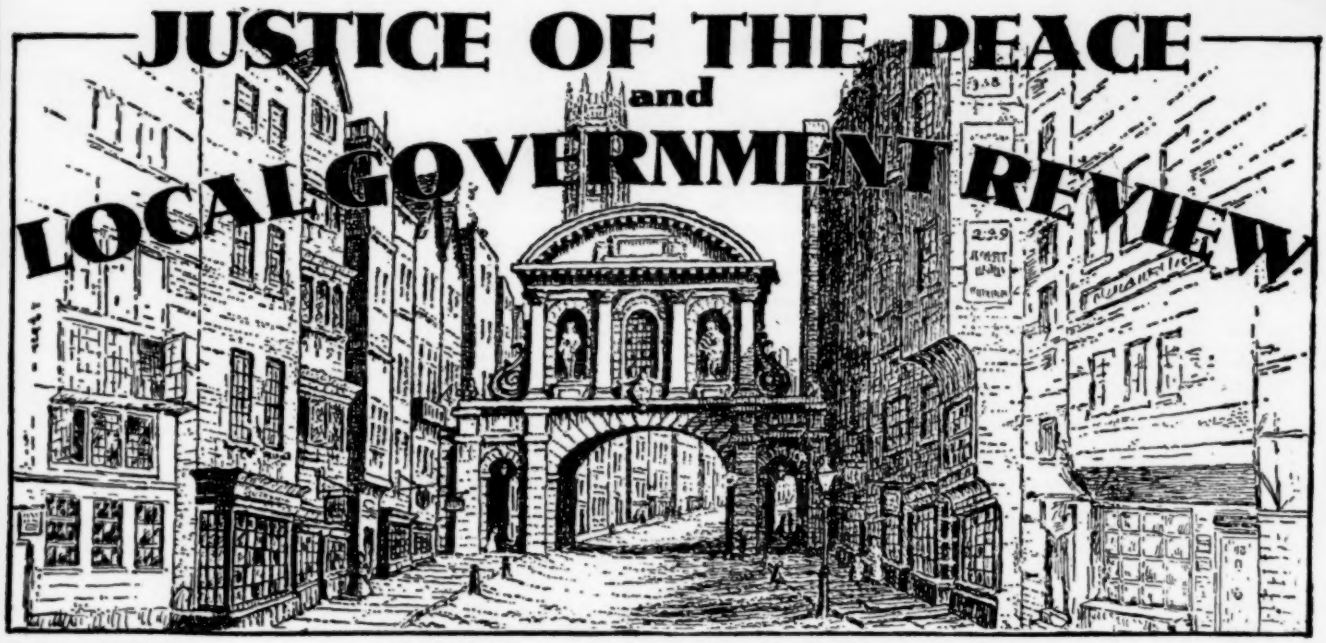

VOL. CXVIII LONDON: SATURDAY, NOVEMBER 6, 1954 No. 45

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.)

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

APPOINTMENTS

HAVANT AND WATERLOO URBAN DISTRICT COUNCIL invite applications from solicitors experienced in local government for the position of DEPUTY CLERK of the Council on the New Grade VII (£900—£1,100). The estimated population of the district is 40,000 and the rateable value is £330,181, and both are growing rapidly.

Applications, giving the names of two referees, must be delivered not later than November 25 to the Clerk of the Council, Town Hall, Havant, from whom further particulars may be obtained on application.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant) Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

DURHAM COUNTY COMBINED AREA PROBATION COMMITTEE

Appointment of Female Probation Officers

APPLICATIONS are invited for the appointment of whole-time Female Probation Officers for the Durham County Combined Probation Area. Applicants must not be less than 23 years or more than 40 years of age except in the case of serving officers.

The appointments and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions. One of the successful applicants will be required to provide a motor car for use in connexion with her duties, for which use travelling allowances in accordance with the Scheme of the National Joint Council for Local Authorities A.P.T. Services will be payable. The persons appointed to these posts will be required to pass a medical examination.

Application, stating age, education, qualifications and experience, together with the names and addresses of two referees, should be received by the undersigned not later than November 20, 1954.

J. K. HOPE,
Secretary to the Combined Probation Committee.

COUNTY OF DERBY

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time male Probation Officer for the Glossop, Chapel-en-le-Frith, Buxton and Bakewell Petty Sessional Divisions.

The appointment and salary will be in accordance with the Probation Rules. The officer will be required to provide a motor car for which an allowance will be made, and to undergo a medical examination.

Applications, on forms obtainable from the the undersigned, must be received not later than November 17, 1954.

D. G. GILMAN,
Secretary to the Derbyshire Area Probation Committee.

County Offices,
Derby.

BOROUGH OF SLOUGH

Appointment of Assistant Town Clerk

APPLICATIONS are invited from Solicitors possessing a sound knowledge of local government law and administration and with considerable experience of advocacy and conveyancing, for the appointment of Assistant Town Clerk within the *NEW* Grades VI/VII of the National Scales at a salary commencing at £900 per annum and rising (subject to satisfactory service) by annual increments of £40 to a maximum of £1,100 per annum.

The person appointed will be responsible for the legal section of the Town Clerk's Department ; will be required to devote the whole of his time to the duties of the office, and will not be permitted to engage, directly or indirectly, in private practice or in any other business or profession.

The appointment, which will be terminable by one month's notice on either side, is subject to the Local Government Superannuation Acts, and the successful applicant will be required to pass a medical examination.

Candidates must, when making application, disclose in writing whether to their knowledge they are related to any member or senior officer of the Council. Canvassing, directly or indirectly, will disqualify.

Applications, on forms to be obtained from the undersigned, must be returned not later than the first post on November 15, 1954.

NORMAN T. BERRY,
Town Clerk.

Town Hall,
Slough.

DORKING URBAN DISTRICT COUNCIL

LEGAL AND ADMINISTRATIVE ASSISTANT REQUIRED ; salary within new Grade III (maximum £725 per annum). Post pensionable and National Council conditions apply.

Further particulars and forms of application may be obtained from the undersigned. Closing date, Wednesday, November 24, 1954.

F. G. SUTHERLAND,
Clerk of the Council.

Council Offices,
Pippbrook,
Dorking, Surrey.

COUNTY OF STAFFORD

Appointment of Assistant Chief Constable

THE Standing Joint Committee of Staffordshire invite applications for the above appointment.

The appointment will be subject to the Police Regulations for the time being in force and the successful candidate will be required to reside within a reasonable distance of Stafford.

The salary upon appointment will be £1,350 per annum, rising by annual increments of £50 to £1,500 per annum, together with allowances for rent, uniform, travelling, lodging and subsistence.

Forms of application can be obtained from me, the undersigned, on request.

Applications, setting out the names of three referees, must reach me not later than first post on Monday, November 15, 1954, at the County Buildings, Stafford.

Canvassing in any form will be a disqualification.

Dated this twenty-sixth day of October, 1954.

T. H. EVANS,
Clerk of the Standing Joint Committee.

County Buildings,
Stafford.

COUNTY OF LONDON QUARTER SESSIONS

COURT CLERK.—Applications are invited from Barristers or Solicitors under 30 years of age for the above full-time immediate appointment ; the salary will be £892 10*s.* 0*d.* × £44 12*s.* 6*d.*—£1,071 and the appointment subject to the provisions of the London County Council (General Powers) Act, 1930. Applications should reach me not later than November 15, 1954. Full particulars may be obtained on personal application to me at the Sessions House, 181, Marylebone Road, N.W.1.—C. Leo Burgess, Clerk of the Peace and Clerk to the Standing Joint Committee.

COUNTY OF SALOP

ASSISTANT SOLICITOR required. Commencing salary up to £750 p.a. according to experience. This is a junior appointment and is open to recently qualified applicants who will have an opportunity of gaining experience in advocacy, conveyancing and Committee work. Applications with full particulars and the names of two referees not later than November 13, 1954.

G. C. GODBER,
Clerk of the County Council.

Shirehall,
Shrewsbury.
October 25, 1954.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Matrimonial Cruelty

It is sometimes argued that the decision in *Jamieson* v. *Jamieson* [1952] 1 All E.R. 875; 116 J.P. 226, laid down that an intent to injure was an essential averment in a case of cruelty. It may be an important element in the offence, but direct proof of such an intention is not always necessary, as appears from the case of *Cooper* v. *Cooper* (*The Times*, October 21) which came before Lord Merriman, P., and Karminski, J.

This was an appeal by the wife from the dismissal by justices of a summons alleging persistent cruelty. The wife had alleged two or three assaults upon her by her husband, but the main charge was that he had committed an indecent assault upon the child of the marriage, upon which charge he had been fined after pleading guilty.

Karminski, J., who delivered the first judgment, referred to a number of cases in which cruelty was alleged as the result of the husband's criminal offences or indecent acts including *Thompson* v. *Thompson* (1901) 85 L.T. 172 and *Bosworthick* v. *Bosworthick* (1901) 86 L.T. 121. On the question of intention he quoted Denning, L.J., in *Kaslefsky* v. *Kaslefsky* [1950] 2 All E.R. 398; 114 J.P. 404, as saying that the intention to injure might readily be inferred from the fact "that it is the natural consequence of the conduct, especially when the husband knows, or it has been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses his wife or not." The learned Judge went on to apply that principle to the present case, and said that there was nothing to show that this wife was lacking in normal sensitiveness; and he could not but infer that the husband must have known, if he had thought about it, that his conduct would cause the greatest distress to her. But such an intention was also to be inferred if he acted in a manner careless and indifferent to the effect. Any man must have known, had he paused to reflect, that the assault on the child would be a dreadful blow to the mother's normal susceptibilities. He distinguished the present case from *Warburton* v. *Warburton* (1953) (*The Times*, July 10) where the offence was not of a sexual nature.

The case was sent back to the justices for a rehearing.

Driving Tests for Convicted Drivers

We note a report in the press that Whitby magistrates recently disqualified a motorist aged 73, who had pleaded guilty to dangerous driving, using the power given by s. 6 (3) of the Road Traffic Act, 1934, that is to say that he was ordered to be disqualified from holding or obtaining a licence until he has, since the date of the order, passed the prescribed test of competence to drive.

We have no information to show how frequently courts use this power. It is available to a court when a person is convicted before it of an offence under s. 11 or under s. 12 of the 1930 Act, and it is immaterial that that person may previously have passed such a test. It is often said, and we think with some justification, that courts do not use frequently enough the power to disqualify given by s. 6 of the 1930 Act which authorizes a court, with certain exceptions, to disqualify any person who is convicted before it of a criminal offence in connexion with the driving of a motor vehicle. So far as s. 11 offences are concerned, a court is *required*, on a second or subsequent conviction, to order disqualification unless having regard to the lapse of time since the previous conviction or for any other special reason it thinks fit not to do so. Under s. 12 the maximum possible disqualification on a first conviction is one month, and on a second conviction is three months, a conviction under s. 11 within three years being treated as if it were a previous conviction under s. 12.

The power given by s. 6 (3) of the 1934 Act to disqualify until a test is passed is additional to the power given by s. 6 of the 1930 Act, so that a court may, for instance, on a first conviction under s. 12 disqualify for one month and further order that the disqualification shall continue thereafter until the offender passes the prescribed test. Provision is made by s. 6 (4) of the 1934 Act for granting a provisional licence to enable a person disqualified by virtue of s. 6 (3) to pass the test. This provision, however, does *not* authorize a person to drive, even on a provisional licence, so long as he is disqualified absolutely by virtue of an order under s. 6 of the 1930 Act.

We call attention to these provisions because we feel that courts might more frequently consider the use of their powers under s. 6 (3) of the 1934 Act. It is a salutary and an effective punishment for bad driving for the guilty person to be prevented from driving again until he has been obliged to think seriously about the method of his driving in order to try to satisfy a qualified examiner that his knowledge and performance justify his holding a licence.

Admonished

In reports in the Scottish newspapers we sometimes read that a defendant has been admonished upon being found guilty of an offence. We take this to mean that he has been convicted and discharged without penalty. In England it used to be common to read of a defendant being discharged with a caution. Now it is a case of an absolute discharge.

Without wishing to be over critical, we cannot help feeling that the expression " absolute discharge " is not altogether happy, as it may well create the impression that the defendant has not been found guilty but has been completely exonerated. Even the defendant, unless the court explains the point to him, may think that at all events he is freed from any sort of payment, and we have heard of a defendant who expressed some indignation upon finding he had to pay costs after being told he would be discharged absolutely. To be formally admonished is something an offender will understand, and if with the admonition there should be some order as to costs or compensation, that ought not to cause any surprise, still less a sense of grievance.

Inspection of Meat

We are watching with interest, and with an opinion of our own which does not amount to partisanship, the argument proceeding in the newspapers about inspecting meat. Should this be taken away from sanitary inspectors, whose duty it has been since the public control of food was first put on a regular footing, or should the duty be assigned to veterinary surgeons? Spokesmen of the latter can make a case; progressively, human health has become subject to monopoly—dentistry and midwifery have established themselves as fields not open to persons, however well qualified, who do not belong to some closed register, and general medical practice, though not yet closed by statute, is tending in the same direction. The veterinary surgeon has not so far been ranked so high in general esteem as his colleagues who perform the like functions upon human patients; what more natural than that he should seek fresh fields to conquer?

Equally, what more natural than that the sanitary inspector, who for a generation past has been striving to secure recognition as a " professional " person, should be reluctant to part with that one of his functions which involves specialized knowledge most resembling what is needed in learned occupations?

As between the contesting parties, the burden of proof is on the advocates of change, and we have seen no convincing reason given for depriving sanitary inspectors of the function.

After-Care

The importance of after-care of persons released from prisons and borstal institutions is now fully recognized, and much thought is being directed towards its improvement. No longer is it thought that all that can be done is to give the discharged prisoner a few shillings and a word of encouragement. Something much more practical has been made possible by the development of a real system.

The dominant note in the report of the Council of the Central After-Care Association for 1953* is one of hopefulness. Sir Lionel Fox, chairman of the council, states its policy as envisaging the progressive integration of the work of after-care, both during sentence and after release, with the training and educational work of the prisons and borstals themselves. The process of rehabilitation begins on reception into prison or borstal institution and is continuous until and after release.

The preventive detention prisoner is one of the most difficult problems, but the prison commissioners have devised a scheme of re-settlement which shows good promise of success. Carefully selected men go to a hostel which stands within the curtilage of Bristol prison. Here they live and work as much as possible like free men. With the co-operation of the Ministry of Labour and National Service and the probation service, they are placed in employment with suitable local employers, who have been apprised of the situation. The prisoner draws his pay, at the usual rate for the job, at his place of employment; out of it he is required to pay for his board and lodging, and provision is made for maintenance of dependants, pocket money and savings.

Home leave for prisoners is still something of a novelty, and some people have questioned the wisdom of granting it. Here is what this report says about it: " During 1953, leave was granted to 91 prisoners from Leyhill and to 75 from Wakefield. All 166 prisoners returned to prison and we are satisfied that not only was the leave welcomed by prisoner and family alike, but in most cases it proved a positive help in their subsequent resettlement."

* H.M. Stationery Office, price 1*s.* net.

Borstal Cases

In an appendix to the report dealing with borstal after-care, Mr. F. C. Foster refers to the difficulties encountered in dealing with the mental defective, the epileptic, the tubercular, the crippled and others with physical and mental handicaps of varying degrees of severity, but he adds that to many of them borstal training and after-care has proved an undoubted blessing. " Many have benefited from surgical, medical or psychological treatment; some have had unsuspected ailments diagnosed and treated while in borstal. In the majority of such cases, borstal training has been a constructive influence and the borstal medical services, the Disabled Persons' Branch of the Ministry of Labour, and the devotion of associates have helped to rescue many such boys from lives of hopelessness and crime."

It appears, then, that the borstal institutions are now tackling problems which in the early days of the system would have been considered beyond them. When there were few institutions and a system was being evolved it could hardly be expected that the seriously handicapped, mentally or physically, could be accepted. Today there are more institutions and classification becomes possible so as to include even some very poor material, but the public should recognize that high percentages of success cannot be expected.

Of the borstal boy the report says that the dominant features of any generalization are negative rather than positive. Sir Lionel Fox writing of the observations of Mr. Foster on this subject says: " It is often said that much juvenile crime arises from the spirit of adventure and high-spirits of youth. But in this description of the borstal boy, drawn by one who has had ample opportunity to observe him, we read only of apathy and emptiness of mind. So that the problem of after-care appears to be not so much to restrain recklessness as to stimulate normal initiative: not so much to control a misdirected energy as to fill a vacuum."

Grass Strips and Parking

We fancy that it was in our own columns that the phrase " The Parking Scandal " first appeared, with reference to London and other large towns where the streets which the public maintain as means of transit are increasingly used as standing ground for vehicles. The acme of selfishness was perhaps revealed in a letter to *The Times* this summer, when a person who had an office in a central London square and (according to his letter) lived within two or three miles, a journey which could easily be accomplished by public means of transport in some 20 minutes, stated that he always made the journey in his car, that he expected as of right to park the car in the square where he had his office, and objected strongly to a limit imposed of two hours for such parking. Having been told by the police that the reason of the limit was to enable visitors to get into the square when they had business and had come by car, he suggested that persons coming

to London from outside ought not to use their cars, and that the space could be kept free for himself and others in the like case. Obviously, he considered that an occupier of premises had a vested right to use the street near those premises as a semi-private adjunct. We are, however, not concerned in this Note with business streets. Another facet of the evil has come to notice in the suburbs and in country residential areas, namely, the parking of cars on grass verges, left for amenity between a carriageway and footway. Under s. 1 of the Roads Improvement Act, 1925, highway authorities have power to provide these strips of grass and there have been similar powers in several local Acts. The strips are a valuable amenity when properly kept up and, incidentally, an economy to the ratepayers, in that they are less costly than a concrete or macadam carriage road or asphalted footway. The whole object is, however, defeated when the strips are used for parking places, which will ruin them in the course of a few weeks. Unfortunately the remedy is not as clear as it might be. Section 28 of the Town Police Clauses Act, 1847, makes it an offence to obstruct a thoroughfare, and the grass strip, being in the highway (if provided in pursuance of s. 1 of the Roads Improvement Act, 1925), is part of the thoroughfare. But it is not a part intended for passing and repassing in the regular course, and the obstruction is so technical that it might be undesirable to use this power for the purpose. Then there is s. 72 of the Highway Act, 1835. The first offence therein is driving a carriage upon a footpath by the side of the road. This enactment would be appropriate to prevent another evil very rife today, the parking of cars halfway across the pavement of a street, at the instigation (we fear) of the police, in order that the carriageway shall be left free, but is doubtful, as applied to a grass verge, which is not a carriageway and is not intended for a footpath. We prefer the third offence in s. 72, " shall cause any injury or damage to be done to the said highway . . . or wilfully destroy or injure the surface of any highway "—on the view already mentioned, that the grass verge or strip is part of the highway. We have seen it suggested also that s. 14 of the Road Traffic Act, 1930, is available, but this seems doubtful. On the assumption already made, that the grass strip between carriageway and footpath (by which we mean here the paved or obvious footpath) is part of the highway, no offence is committed unless the grass strip is itself a " footway," and the same doubt thus arises as upon s. 28 of the Town Police Clauses Act, 1847, *supra*.

Moreover, the first proviso to s. 14 of the Act of 1930 declares that no offence is committed under the section, if the vehicle is driven for the purpose only of parking, not more than 15 *yds.* from the carriage road, so that the proviso, apart from any other obstacle to using s. 14, seems to make it useless for the present purpose.

The evil is, in its own sphere, far from trivial, public money is thrown away when the grass strip laid out at public cost is destroyed by motorists and public amenities are lessened not merely for residents in the road but for everyone who passes through it. Is there a more effective remedy under the existing statutes than the sections we have been discussing ?

At 114 J.P.N. 433 we spoke of a byelaw made by the county council of Warwickshire, under s. 249 of the Local Government Act, 1933, to check horse riding upon grass strips laid out beside the roads in a particular district. Horses' hoofs can damage ornamental grass, especially if they are ridden thoughtlessly, but the damage is nothing by comparison with that done by the tyres of a motor parked on grass and started again when the grass is soft, to say nothing of the inevitable oil. The councils of boroughs where there are ornamental strips of the kind in question, and of counties as regards districts in the county where there are such strips, may be advised (we think) to think about a byelaw for good rule and government to curb this form of selfishness. We should, perhaps, add that we are not here speaking about London. We are told that the mischief is particularly bad in some suburbs within the county, but we suppose (without having verified the point) that there are special powers in the London statutes.

The Charge for Voters' Lists

It is essential to the system known in England as democracy, by which government is carried on in territorial areas by elected persons, that the register of electors shall be available to everyone. The registers must be printed, and must be open to inspection at suitable points ; they must also, we suppose, be put on sale for the benefit of political parties who are concerned to canvass the electorate, although their being on sale is of no advantage to the individual elector. What is not evident is why they should be put on sale to the world at large at a cost below that of printing and production. Local authorities are concerned, because part of the cost of producing the register every year falls upon the rates, even though half is covered by a government grant. That grant means that every one of us is concerned as a taxpayer. Pretty well every one of us is concerned also as a householder, because the register of electors provides, at a lower cost than a list could be compiled otherwise, a canvassing list for commercial advertisers. Pool promoters in particular, and the makers of cleansing products who send by almost every post puffs of some new invention, derive their fundamental lists from the register of local electors. To a large proportion of householders this flood of printed matter is at least a nuisance ; to some it is an irritation also, if they disapprove of gambling—or are so old fashioned as to patronize the racecourse and the laundry. For our part, we have no desire to interfere with this method of advertisement, which was shown by the evidence before the Royal Commission on Betting and Gambling to be a substantial prop to public revenues ; without the pool promoters, the bookmakers, and other gambling interests, the Post Office would have to charge even more than it charges already, at the inflated modern prices for its everyday services to ordinary people. We do not, however, think that any great diminution in postal traffic would follow if the advertising interests, who now obtain the registers of electors for their own purposes, were required to pay for these registers at an economic price. As we all know, Her Majesty's Stationery Office now charges very highly for ordinary blue books and other government publications, unwisely so in the opinion of many who are concerned with disseminating public information. We can see no reason why electors' lists should not have their price fixed like blue books and white papers, on a basis of cost of production, instead of at the wholly unremunerative amount laid down in the Representation of the People Act, 1949. It would still be possible to sell them at a special price to political associations, or local bodies wanting them for a non-commercial purpose. No modern British Government can be expected to take action displeasing to the advertising trade, as has been shown by the refusal of governments for many years (whatever their complexion) to tackle seriously the twin evils of quack medicine and exaggerated claims for special foods. Least of all could a government be fairly expected to do anything disliked by the advertisement trade, when it had a general election in the offing. But the trade would pass on the cost of buying registers to its customers, the firms who now pay for sending out the advertisements, and we doubt whether any perceptible increase would follow in the cost of goods, or any perceptible decrease in the prizes of the pools. As things are now, the taxpayer who does not bet or wash is subsidizing those who do, if the low cost of electoral registers is reflected all through to the consumer. If it is not, he is subsidizing an intermediate commercial interest.

PEDESTRIAN CROSSINGS OFFENCES—THE QUESTION OF DISQUALIFICATION

By J. P. EDDY, Q.C.

In the course of the article which I contributed to the issue of the *Justice of the Peace* for October 2 on " Disqualifications for Driving Offences " I expressed the view that there is no power to disqualify for a pedestrian crossing offence. I based that view on these grounds—

1. I think that the discretionary power to disqualify conferred by s. 6 of the Road Traffic Act, 1930, is limited to driving offences under the Road Traffic Acts, 1930 to 1934.

2. Section 18 of the Road Traffic Act, 1934, gives the Minister of Transport power to make regulations with respect to pedestrian crossings. Subsection 8 provides that if a person contravenes any of the provisions of a regulation having effect as respects a crossing, he is to be liable to a fine not exceeding £5. There is nothing in the subsection to warrant the view that he is to be liable to anything else.

3. In the old regulations and in the new, effect was of course given to the above statutory restriction as to penalty. The maximum fine to which a person is to be liable for a contravention of the regulations is £5 (the Pedestrian Crossings Regulations, 1954 : 1954, No. 370, reg. 9), and, in my opinion, there is no power to add anything to it.

4. If there is any ambiguity as to disqualification in regard to a pedestrian crossing offence it must be resolved in favour of the defendant.

A correspondent has drawn my attention to a provision of the Motor Car Act, 1903 (which was of course repealed by the Road Traffic Act, 1930) and to three cases—*Brown* v. *Crossley* (1911) 75 J.P. 177, *White* v. *Jackson* (1915) 79 J.P. 447, and *Simmonds* v. *Pond* (1918) 83 J.P. 56.

Section 4 of the 1903 Act provided that " any court before whom a person is convicted of an offence under this Act, or of any offence in connexion with the driving of a motor car, other than a first or second offence consisting solely of exceeding any limit of speed fixed under the Act " might suspend the licence of the person convicted, or disqualify him, and should cause particulars of the conviction to be endorsed.

DECISIONS UNDER 1903 ACT

Lord Alverstone, C.J., pointed out in *Brown* v. *Crossley*, *supra*—a decision of a Divisional Court of the King's Bench Division—that that section had in plain terms provided for the case where a person was convicted of an offence under the Act, or of an offence in connexion with the driving of a motor car, whether it was under that Act or not. It was held in that case that the offence of using a motor car on a public highway at night without a light at the back of the car, contrary to art. 11 of the Motor Car (Registration and Licensing) Order, 1903, made under the Motor Car Acts, 1896 and 1903, was an offence under the 1903 Act, and a conviction for such offence was therefore endorsable.

In *White* v. *Jackson*, *supra*—also a decision of a Divisional Court of the King's Bench Division—it was held that a person who was convicted of driving a motor car on which powerful lamps were used in contravention of an order made under reg. 11 of the Defence of the Realm (Consolidation) Regulations, 1914, committed an offence " in connexion with the driving of a motor car," and that the conviction must be endorsed upon his licence.

In *Simmonds* v. *Pond*, *supra*—also a decision of a Divisional Court of the King's Bench Division—it was held that a conviction for infringing the Motor Spirit (Consolidation) and Gas Restriction Order, 1918, by the unauthorized use of petrol for the purpose of driving a motor car was an offence " in connexion with the driving of a motor car," and must therefore be endorsed on the defendant's licence.

Reference should, I think, also be made to another case. It is *R.* v. *The Justices of Yorkshire* (*West Riding*), *ex parte Shackleton* (1910) 74 J.P. 127. It was there held that a breach of art. IV of the Motor Cars (Use and Construction) Order, 1904, in allowing a motor car to stand on a highway so as to cause an unnecessary obstruction, was not an offence in connexion with the driving of a motor car within the meaning of s. 4 of the Motor Car Act, 1903 ; and therefore a driver who, after being convicted of that breach, refused to produce his licence for the purpose of endorsement could not be convicted of an offence under the Act of 1903. Lord Alverstone, C.J., said in that case that the words " any offence in connexion with the driving of a motor car " pointed to offences connected with the handling or manipulation of the car in the process of driving it.

A " CRIMINAL OFFENCE "

As will be seen, all these cases were decided before the passing of the Road Traffic Act, 1930. The introductory phraseology of this Act is somewhat different from that of s. 4 of the 1903 Act. It provides as follows : "Any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle (not being an offence under Part IV of the Act) . . ." Unlike the earlier statute, there are no words to indicate an offence under any other Act and, *prima facie*, they appear to refer to an offence created by the Act itself. Yet, taken by itself, the phrase " any criminal offence in connexion with the driving of a motor vehicle " is wide enough to cover offences under other Acts. Indeed, *Stone's Justices' Manual* for 1954, p. 2032, says " This will apparently include offences under other Acts."

One further difference, however, between the Act of 1903 and the Act of 1930 should be noted. In the 1930 Act the word " criminal " has been inserted before the word " offence." To come within s. 6 there must be a " criminal offence " in connexion with the driving of a motor vehicle.

Blackstone's Commentaries define a crime, or misdemeanour, as " an act committed, or omitted, in violation of a public law, either forbidding or commanding it." This general definition " comprehends both crimes and misdemeanours, which, properly speaking, are mere synonymous terms, though in common usage the word ' crime ' is made to denote such offences as are of a deeper or more atrocious dye, while smaller faults and omissions of less consequence are comprised under the gentler name of ' misdemeanours ' only." (4 Bl. Com. 5.)

Lord Esher considered the phrase " criminal offence " in *Osborne* v. *Milman* (1887) 18 Q.B.D. 471. The offence in question in that case, he said, " has all the essential elements of a crime."

In *Stroud's Judicial Dictionary*, 3rd edn., p. 683, it is stated that the general interpretation of crime is " an offence against the Crown punishable by fine or imprisonment."

Whatever may be the precise meaning of " criminal offence " in s. 6 of the 1930 Act, it is at least arguable that it is an offence of " a deeper dye " than " offence " in s. 4 of the 1903 Act.

Is it an appropriate phrase to use in connexion with a contravention of the Pedestrian Crossings Regulations which involves a maximum fine of £5? On this opinions may well differ.

LIMITATION OF PERIOD

It is evident, however, that careless driving, with its maximum fine of £20, is to be treated as a criminal offence. By s. 5 of the Road Traffic Act, 1934, the Legislature limited the period of disqualification which the court may impose on a first conviction for this offence to one month. By s. 18 of the same statute the Legislature gave power to the Minister of Transport to make regulations respecting pedestrian crossings, and provided that the maximum fine for a breach should not exceed £5. If it was intended that there should be power, in addition, to impose disqualification it is curious that the section makes no reference to it. It is perhaps still more curious that the Legislature, having limited the period of disqualification in the case of careless driving, should have omitted to limit the period of disqualification in the case of a pedestrian crossing offence. If there is power to disqualify for this offence, for what period may the court disqualify the offender?

The inference to be drawn from the fact that there were 6,335 convictions during 1953 for neglect of regulations governing pedestrian crossings, and that only in respect of one of those convictions was disqualification imposed, seems to be plain. Either the view generally held is that there is no power to disqualify for a pedestrian crossing offence, or there are widespread doubts concerning it. In either case the matter seems to be one which merits consideration in relation to the new Road Traffic Bill which is said to be in course of preparation.

OBSCENE PUBLICATIONS—III

(*Continued from p.* 682, *ante*)

What Mr. Justice Stephen said is very valuable, although it still leaves everything to be decided on facts in each case by the jury or the magistrates, and (this being so) it is open to argument whether the courts have been right in saying that professional evidence about the quality of a publication is irrelevant and must be excluded. Surely a bench or jury, called upon to determine whether exhibition of a picture (for example) in a gallery open to the public upon payment was "necessary to art," in Mr. Justice Stephen's words "in the manner, to the extent, and in the circumstances" might advantageously hear what a Royal Academician or the art critic of *The Times* thinks about the picture. In *R.* v. *Hicklin*, *supra*, Lush, J., had said there was a Venus in the Dulwich Gallery which was properly shown there (*i.e.*, it satisfied the test laid down a few years afterwards by Mr. Justice Stephen) although it did not follow that a reproduction could be sold in the streets with impunity. At the present day, the great art galleries themselves sell reproductions of the famous nudes, and so do picture shops, but let that pass. We call attention to what was said by Mr. Justice Lush, for the purpose of contrasting it with what Mr. Mead said in the case of the Warren Gallery, which had given an exhibition of some of D. H. Lawrence's paintings. He there said: "It is utterly immaterial whether they are works of art. That is a collateral question which I have not to decide. The most splendidly painted picture in the universe might be obscene." (*The Times*, August 9, 1929). This related to pictures to the artistic quality of which Mr. Augustus John was prepared to testify, and Lawrence's biographer, Mr. Richard Aldington (himself a novelist of standing) severely censures Mr. Mead, also the two Home Secretaries (Lord Brentford and Mr. Clynes) involved at different stages of the case, the former of whom had stated in the House of Commons that he did not "seek literary advice when deciding if matter was obscene." In truth, Mr. Mead's statement, startling though it looks in print, was in accordance with the strict letter of English law as understood in 1929—and apparently today, but although Mr. Mead based his remarks partly upon the Chief Magistrate's refusal to hear literary evidence in the case of *The Well of Loneliness*, a few years earlier, it can be argued that (whatever the present law) such evidence ought on merits to be admitted as relevant.

The distinction asserted in *R.* v. *Hicklin*, *supra*, between showing pictures in an art gallery open to the public and offering reproductions in the way of trade, was revived and sought to be applied in the *Decameron* case, when counsel for the Director of Public Prosecutions suggested a difference between the borough library and a back street bookseller. It is one way of applying what we have above called the "let out." If it is proper to take no steps against the trustees of the National Gallery or Dulwich Gallery, whether it would be proper to prosecute a print seller who bought the reproductions which are on sale in the Galleries, and re-sold them in his shop, is a question for the magistrates to decide *ad hoc* in every case that comes before them. (There is a story told in Aldington's biography of D. H. Lawrence, that in the Warren Gallery case a summons had been issued against one William Blake, reproductions of whose pictures were on show at the same time as Lawrence's paintings, and that the summons was withdrawn when the police learnt that Blake had died in 1827. The story is *ben trovato* but probably *non vero*, because under the Act of 1857 what the police needed was a warrant to seize the pictures and then a summons against the occupier of the premises, and for the purpose of the warrant and such a summons it mattered not whether the artist was alive.)

What the Queen's Bench had in mind, however, at the point where counsel mentioned Dulwich, was not so much the two-pronged enactment in the Act of 1857 as the argument which had been urged in *R.* v. *Hicklin* as in nearly every case, that the work before the court is no more obscene, or no more proper to be prosecuted, than some famous paintings or those portions of the Bible that every schoolboy knows. This is one of the points where the lawyer and the literary man part company most decidedly. If, said Lord Goddard in *R.* v. *Reiter*, *supra*, a jury or a bench of magistrates once launched into comparison between one literary or artistic product and another, they would be embarking on an endless and hopeless quest. There is one point to be noticed here, which seems to have escaped general attention. If you may not argue that the book before the court is no worse than *Pericles, Prince of Tyre*, *Measure for Measure*, or *The Reeve's Tale*, by what logic or justice can the prosecution seek to condemn it because it is found in the same shop as Hank Jackson's works, or because it has a paper cover, or is sold at a cheap price? Yet all these arguments have been used in cases mentioned in this article. In *R.* v. *Thomson*, *supra*, the Common Serjeant had remarked that the *Heptameron* was priced at 1*s.* 11*d.* In the case of the *Decameron* the book was a luxury edition at £3 3*s.* 0*d.*, but counsel sought to introduce prejudice by referring to other books in the same shop, which surely had no relation to the character of that book in itself. Again, reference is constant to "the paper-back trade": we have found this as a derogatory term in American studies

of the subject, and in the *Manchester Guardian* of August 27, 1954, but what about the *Penguins* and the *Pelicans*? The price, and the book's companions in the shop, seem equally beside the point.

So also, upon the point already mentioned, of the quality and value of a book or picture as a work of art, the lawyer has felt bound to diverge from the almost unanimous approach of the literary and artistic world—but, on this point, there is more to be said for the literary and artistic approach than the lawyer has been willing to admit, and this upon the lawyer's own premises. We have in mind, once more, the two-pronged enactment of 1857. Be it granted that the artist's or critic's judgment cannot be substituted for that of the magistrates or jury, on the primary question whether a publication is " obscene," may it not be that his opinion could be usefully admitted in evidence upon the second question, whether the publication was proper to be prosecuted? We have already seen that no English judge has taken his stand with the Comstock school; they have sometimes avowedly, and always tacitly, admitted the propriety of publishing (in English) the Greek and Latin classics, the great classics from other foreign languages like Boccaccio and Rabelais, as well as Shakespeare and Chaucer, Dryden and *Tom Jones*, and, in general, whatever has been ranked by educated people as art or literature, provided the artist or author is long enough planted in his tomb, while American courts in the latter part of last century and early in this century were also presented with the problem of the classics, ancient and modern, and declined to hold them to be obscene. *Securus judicat orbis terrarum*, but why should a court not admit the evidence of persons, better educated for the function of appraising works of art than magistrates or jurymen can be, just as they would admit the evidence of an engineer on the question whether a machine had been properly constructed, or a sailor on the question whether a ship had been competently steered?

It has been almost common form for defending counsel in the English courts to seek to compare the publications of their clients with Shakespeare or the Bible. In a case last year at Hastings the chairman of the magistrates dealt with this comparison by saying that *The Rape of Lucrece* would not be issued with a suggestive picture on the cover. Here his line of thought was off the target for, in fact, if not Shakespeare, there are authors of less (but not less undoubted) eminence, whose works are commonly so issued. Moreover, it is in Shakespeare's plays, not in *Lucrece*, that the obscenities occur. A different mode of answering this stock argument for the defence was adopted by the Court of Session in the Scottish case already quoted, namely that " the character of other books is a collateral issue, the exploration of which would be endless and futile. If the books produced by the prosecution are indecent or obscene, their quality in that respect cannot be made any better by examining other books, or listening to the opinions of other people with regard to those other books. . . . I am not dismayed by the idea that the opinion of the magistrate before whom the case is brought is virtually determinative of the question whether the books or pictures are or are not indecent or obscene . . . the book or picture provides the best evidence of its own indecency or obscenity or of the absence of such qualities " (*Gallatly* v. *Laird*, *McGown* v. *Robertson*, 1953, S.C. (J.) 16).

We have said enough to show that the second and third questions we have posed are difficult, even if, as *The Times* has said, in effect, an ordinary bench or jury can determine by the light of nature whether this or that publication is obscene. Because of the inherent difficulty of the second question, and because of the possibility (as it seems to us) that grave injustice might be caused by discrepant decisions as between one bench and another, we do not feel so sure as the Court of Criminal Appeal and the Court of Session, that the magistrates are the right tribunal for these cases.

The test laid down in *R.* v. *Hicklin*, and now endorsed in *R.* v. *Reiter and Others*, *supra*, may supply a practical standard for application by a bench of magistrates in summary cases or by a jury on indictment, but (as we have seen) the test is open to logical attack which it has not escaped. Literary persons, even when conceding that the law ought to concern itself with the moral tendency of literature, have urged that the test ought to be less subjective; there are persons susceptible to corrupt influence in every age, and is it right that those who are not susceptible should be deprived of the opportunity of reading works which might increase their knowledge or stimulate their intellect? Some such line as this seems to have appealed to the Old Bailey jury in *R.* v. *Thomson*, *supra*, as long ago as 1900, and it was avowedly taken by an American judge in a case to which we shall refer below, and by Stable, J., in *R.* v. *Warburg* (*Martin Secker*), *Ltd.*, of which more below, but the old test was re-applied by the Recorder in *R.* v. *Hutchinson*, *supra*. It can be argued that any other test might concede complete liberty of publishing, since it would be absurd to say that a book was not obscene merely because it would not corrupt the mind of a judge or a bishop, or persons such as a University tutor or a regular subscriber to the *Justice of the Peace and Local Government Review*, whose mind (it is axiomatic) is not open to immoral influences. The American judge already mentioned adopted *l'homme moyen sensuel* as having the sort of mind upon which the test was to be applied, and this is more logical than the English test, but in practice, trying the case without a jury, he was constrained to use his own mind and those of two personal friends, to whom he submitted the book that had been brought before him for adjudication.

The American courts have, in the last few years, given more attention than have British courts to the problem of the standard to apply, partly because of the variety of legislation to be found in different States, and of courts and jurisdictions; partly because the problem has become involved with that of supposedly communist publications, a much greater worry to the North American than to the British mind. Plainly, if you set out to suppress writings deemed seditious, and if the weaker brethren's susceptibility is to be the test, you have to weigh the risk that they will be turned astray by writings which would have no effect on a well-tutored intelligence. And once you start on the path of political as well as moral censorship (especially when, as in English speaking countries, you are obliged to pretend that you are not exercising censorship) you are driven into considering constitutional issues—all the more so in the United States, where legislatures and courts are both confined in constitutional trammels dating from the eighteenth century.

Thus it has come about that *R.* v. *Hicklin*, *supra*, which the Court of Criminal Appeal has just reaffirmed in England (and which is accepted also for Scottish law, despite the usually more logical bias of the latter) has been examined, re-examined, queried, and departed from, by court after court in the United States. Although the suitability of the English " weaker brethren " test has in the higher courts of the United States been also considered in a political context, what seems to be regarded by American lawyers as the first important attack upon Lord Chief Justice Cockburn's reasoning was in relation to an allegedly obscene publication. This occurred in one of the State courts of New York, and its exceptional weight is due to its having been a pronouncement by Judge Learned Hand who, before his retirement at the age of 80 in 1952, had attained international status as a jurist, even though in his own country

he never reached the highest judicial office. In the case of *United States* v. *Kennerley* he said :

". . . I hope it is not improper for me to say that the rule as laid down, however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time . . . I question whether in the end men will regard that as obscene which is honestly relevant to the adequate expression of innocent ideas, and whether they will not believe that truth and beauty are too precious to society at large to be mutilated in the interests of those most likely to pervert them to base uses. Indeed, it seems hardly likely that we are even today so lukewarm in our interest in letters or serious discussion as to be content to reduce our treatment of sex to the standard of a child's library in the supposed interest of a salacious few, or that shame will for long prevent us from adequate portrayal of some of the most serious and beautiful sides of human nature . . .

" Yet if the time is not yet when men think innocent all that which is honestly germane to a pure subject, however little it may mince its words, still I scarcely think that they would forbid all that which might corrupt the most corruptible, or that society is prepared to accept for its own limitations those which may perhaps be necessary to the weakest of its members. If there be no abstract definition, such as I have suggested, should not the word " obscene " be allowed to indicate the present critical point in the compromise between candour and shame at which the community may have arrived here and now ? . . . To put thought in leash to the average conscience of the time is perhaps tolerable, but to fetter it by the necessities of the lowest and least capable seems a fatal policy."

This was in 1913.

His honour's protest, against being compelled by authority to follow a decision which he regarded as illogical and out of date, led to re-examination of the problem, especially by the courts of New York and Massachusetts, where it may be supposed (since the output of printed matter in New York and Boston overwhelmingly exceeds the average) that the problem is most likely to arise. Between the wars, there were a number of decisions and some legislation. Of these decisions that given by Judge Woolsey, which was in a customs case, not upon a prosecution for alleged obscenity, is the best known, by reason (as we have already mentioned) of its adopting the standard of the average man, represented by the judge himself and by his friends. The legal procedure of the United States provides a better opportunity than does the English law for bringing such an issue before the judiciary, in that by the Tariff Act, 1930, the collector of customs, having seized a book, picture, or other representation in course of importation as being in his opinion obscene, must inform the District Attorney, who then applies for a decision of the District court. The case we are noticing related to *Ulysses*, by James Joyce, who was an Irish author of established reputation long before he wrote it. That book has a curious history. Certainly it would not have been accepted for publication in the first place in Great Britain or in Ireland, and for years after its publication on the Continent in 1922 it was excluded by the Customs from being imported (otherwise than surreptitiously) into either country. Yet, while this exclusion was in force, extracts were being read in programmes of the B.B.C. by one of the leading critics of the day. It was never challenged by a prosecution ; this is perhaps not remarkable, since at that time it was not put openly on sale, but what is more remarkable is that in the author's own country it was never put on the list of books prohibited under the Censorship Act of 1925, which had included works by Shaw, George Moore, Sean O'Casey, and Liam O'Flaherty, among Irish writers, as well as Aldous Huxley, Somerset Maugham, and H. G. Wells amongst Englishmen ; Hemingway and Dreiser amongst Americans. Nor was it placed on the *Index Librorum Prohibitorum* of the Roman Church, or included in the holocaust of supposedly obscene publications destroyed when a revival of puritanism marked the early stages of German National Socialism.

What Judge Woolsey said on that occasion is worth quoting : it will be observed that he was well aware that James Joyce was an author of high standing, and *Ulysses* a book already known in countries where it was allowed to circulate. His judgment stated : " The reputation of *Ulysses* in the literary world, however, warranted my taking such time as was necessary to enable me to satisfy myself as to the intent with which the book was written for, of course, in any case where a book is claimed to be obscene it must first be determined whether the intent with which it was written was what is called, according to the usual phrase, pornographic—that is, written for the purpose of exploiting obscenity. If the conclusion is that the book is pornographic that is the end of the inquiry and forfeiture must follow. But in *Ulysses*, in spite of its unusual frankness, I do not detect anywhere the leer of the sensualist. I hold, therefore, that it is not pornographic. The meaning of the word ' obscene ' as legally defined by the courts is : tending to stir the sex impulses or to lead to sexually impure and lustful thoughts . . . Whether a particular book would tend to excite such impulses and thoughts must be tested by the court's opinion as to its effect on a person with average sex instincts—what the French would call *l'homme moyen sensuel*—who plays, in this branch of legal inquiry, the same role of hypothetical reagent as does the ' reasonable man ' in the law of torts and the ' man learned in the art ' on the questions of invention in patent law. The risk involved in the use of such a reagent arises from the inherent tendency of the trier of facts, however fair he may intend to be, to make his reagent too much subservient to his own idiosyncrasies. Here, I have attempted to avoid this, if possible, and to make my reagent herein more objective than he might otherwise be, by adopting the following course :

" After I had made my decision in regard to the aspect of *Ulysses* now under consideration, I checked my impressions with two friends of mine who in my opinion answered to the above stated requirement for my reagent. These literary assessors—as I might properly describe them—were called on separately, and neither knew I was consulting the other. They are men whose opinion on literature and on life I value most highly. They had both read *Ulysses*, and of course were wholly unconnected with this case. Without letting either of my assessors know what my decision was, I gave to each of them the legal definition of obscene and asked each whether in his opinion *Ulysses* was obscene within that definition.

" I was interested to find that they both agreed with my opinion : that reading *Ulysses* in its entirety, as a book must be read on such a test as this, it did not tend to excite sexual impulses or lustful thoughts but that its net effect on them was only that of a somewhat tragic and very powerful commentary on the inner lives of men and women.

"It is only with the normal person that the law is concerned. Such a test as I have described, therefore, is the only proper test of obscenity in the case of a book like *Ulysses* which is a sincere and serious attempt to devise a new literary method for the observation and description of mankind.

" I am quite aware that owing to some of its scenes *Ulysses* is a rather strong draught to ask some sensitive, though normal, persons to take. But my considered opinion, after long reflection, is that whilst in many places the effect of *Ulysses* on the reader undoubtedly is somewhat emetic, nowhere does it tend to

be aphrodisiac. *Ulysses* may, therefore, be admitted into the United States."

Whilst many of Judge Woolsey's "average" readers might agree with him on the subject of the book's emetic quality, it has been hailed as a work of such formative power that no future novelist will be able to escape its influence. Holbrook Jackson said: "With all its faults, it is the biggest event in the history of the English novel since Jude." Arnold Bennett in *The Outlook* wrote in April, 1922, that he had never read anything to surpass it. The literary critic of *The Pink 'Un* said it was enough to make a Hottentot sick, and the Customs at Folkestone in 1923 confiscated the whole of the third edition. Confiscation of 500 copies at New York 10 years later led to Judge Woolsey's decision above mentioned, in December, 1933, which was affirmed in August, 1934, by the United States Circuit Court of Appeals, of which Judge Learned Hand was a member, though the leading judgment was delivered by Judge Augustus Hand. In the course of his judgment Judge Augustus Hand repudiated the rule in *R.* v. *Hicklin*, *supra*, which Judge Learned Hand had so regretfully followed 20 years before; the judgment of 1934 is worth quoting because of its express admission of a standard of judgment which English courts have emphatically (though we shall suggest below not always wholeheartedly) rejected. He said:

"While any construction of the statute that will fit all cases is difficult, we believe that the proper test is its dominant effect. In applying this test, relevancy of the objectionable parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past, if it is ancient, are persuasive pieces of evidence; for works of art are not likely to sustain a high position with no better warrant for their existence than their obscene content."

This case about *Ulysses*, therefore, brought into focus (in the United States) the views of lawyers and of literary men, and seems to have marked the beginning of serious doubt about the necessity, and even the propriety, of the controls in question. The most striking feature, possibly, about such doubt is that it should have openly been expressed by lawyers, in an English speaking country, for in the English speaking world it has, for a century or so, been axiomatic that legislatures have not merely a right but also a duty to control the public choice of reading matter upon grounds of sexual morality.

In the interval between the above-quoted judgments of Judge Learned Hand and Judge Augustus Hand, legal heart searching had gone deep in the United States about the laws invoked to deal with alleged obscenity. This had in part been by an alliance (in the intellectual realm) between questionings and doubts about the checks, direct and indirect, imposed upon political expression; in part, because of the differing laws of different States, the galaxy of courts of co-ordinate jurisdiction, and the proliferation of societies formed to suppress this, that, and the other, which led to challenge (in the courts or at the custom house) of a much larger selection than had been challenged here, of works admittedly forming part of the whole world's literary heritage, and of serious modern works. Voltaire in forty-two volumes was challenged in New York in 1909, and held not to be obscene; the *Decameron*, *The Arabian Nights*, and *Ars Amatoria*, had similarly been challenged unsuccessfully so long ago as 1894. In 1930 a pamphlet on sex instruction, written avowedly for adolescents, was held (upon appeal against conviction) to be not obscene, and the Circuit Court declared that the main effect of the book must be considered, not isolated passages.

In the same year the legislature of Massachusetts expressly altered its statute law, by repealing a reference to "obscene, indecent or impure language"—this by reason of a conviction in that year for selling Dreiser's *An American Tragedy*, upon the basis of selected passages alone. In 1931 it was held lawful to import two well-known books by Dr. Marie Stopes. It is an interesting parallel (*The Times*, January 19, 1954) to find the Supreme Court of the United States ruling unanimously that State censorship boards cannot ban films on the ground of immorality, because to do so would infringe the "free speech" guarantee of the Constitution.

(*To be continued*)

CERTIFICATES OF DISREPAIR

Most local housing authorities will by now have started thinking about their slum clearance schemes and the return they will have to make to the Minister under circular 55/54. Almost as important, however, is the operation of s. 26 of the Housing Repairs and Rents Act, 1954, under which the local authority are required to consider applications for the issue of "certificates of disrepair" which, if issued, will entitle the tenant to withhold the "repairs increase" demanded by the landlord.

The procedure is of course similar to that governing the issue of certificates under s. 5 of the Rent &c. Restrictions Act, 1923 (now repealed, and *see* s. 27 of the 1954 Act), but the new procedure is more detailed and likely to be much more frequently invoked. We are therefore proposing to deal with a few practical points arising under the section which may cause difficulty.

(*a*) A form of certificate is prescribed by the Housing Repairs (Increase of Rent) Regulations, 1954, but no form is prescribed for a subsequent revocation of a certificate on application by the landlord under s. 26 (4). Revocation could presumably be effected by requiring the tenant to surrender his certificate and by the destruction thereof by the local authority's officer in the presence of both parties, but it is obviously much simpler if the local authority issue a further document revoking the certificate, which the landlord can then produce in court if necessary.

(*b*) The duty to give (and to revoke) a certificate is vested by the section in the local authority, and whereas this duty may be delegated to a committee (Local Government Act, 1933, s. 85 (1)), it may not be handed over to an officer, however technical the matter may become in practice: *Shoreditch Vestry* v. *Holmes* (1885), 50 J.P. 132.

(*c*) When considering whether or not the house complies with the statutory conditions, the authority must, it seems, arrange for its detailed inspection, and require information on the following:

(i) Whether the house is reasonably suitable for occupation having regard to items (*b*) to (*h*), specified in s. 9 (1) of the Act. Leaving aside the item omitted ((*a*)—repair), this amounts to the standard applicable to a decision whether the house is unfit for human habitation for the purposes of the Housing Act, 1936. Under the old law, the "reasonable state of repair"

of the 1933 Rent Act was probably a somewhat higher standard than " unfit for human habitation " under the Housing Act, 1936.

(ii) Whether the house is in " good repair " ; an expression which is defined—for the purposes of Part II of the Act only—in s. 49 (1), and includes the state of decoration (subject to what is said below), although decorative repairs are probably to be ignored under s. 9.

(*d*) Under the 1933 Act, the local sanitary authority, when deciding whether to issue a certificate, were entitled to ignore the respective responsibilities as to repair of the landlord and the tenant. Under the new Act, however, the local authority must take notice of the position between the parties as to " internal decorative repairs," in cases where s. 30 (3) applies. It seems that in every case the local authority will have to inquire whether the landlord or the tenant is under an " express liability " (as distinct from the statutory liability of s. 30 (1)) to carry out internal decorative repairs and if *not*, whether the landlord has served a " notice of election " in the prescribed form on the tenant. If such a notice has been served, then the state of internal decorative repair is to be disregarded, unless it is so bad that it makes the house not reasonably suitable for occupation.

(*e*) All defects are to be taken into account, subject to s. 30 (3) above, even if any of them are due to an act, neglect or default on the part of the tenant (*see* s. 31 (1), proviso). This may cause a further difficulty, for a landlord may " appeal " to the county court in any case where a certificate has been issued (*see* s. 26 (2)). In such proceedings, however, the court does not have to decide whether the certificate was good or bad, but whether " the conditions justifying an increase of rent were justified," and the proviso to s. 31 (1) applies only when " determining whether a certificate should be granted or revoked"; the court therefore is entitled, it seems, to disregard any defects due to an act, neglect or default of the tenant or in breach by him of any express clause in the agreement. Such a conflict between the court and the local authority would not necessarily reflect any discredit on the latter, but a number of such cases in any particular town will obviously lead to criticism of the local authority.

(*f*) In cases of flats, tenements, etc., the local authority must also take notice of the state of repair of entrance halls, staircases, etc. (*see* s. 31 (2)).

(*g*) Finally, it should be noted that the whole of this procedure can be invoked only when " a notice of increase under s. 26 " has been served. This must mean a notice in the prescribed form, accompanied by the appropriate declarations. Where a tenant has had a letter from the landlord informing him of a purported increase in the rent, the local authority officer handling the matter should advise the tenant to tell his landlord he proposes to ignore the matter until he receives a proper notice of increase.

Unlike certificates under the 1923 Act, for which a fixed fee of 1*s*. was payable, the local authority are empowered to fix the fee, provided this does not exceed one shilling (*see* s. 26 (6)). It seems doubtful, on the wording of this provision, whether the local authority would be entitled to decide that no fee at all should be paid. J.F.G.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Lynskey and Ormerod, JJ.)

October 21, 1954

DAVIES, TURNER & CO., LTD. *v.* BRODIE

Road Traffic—Goods vehicle—" A " licence—Aiding and abetting use of vehicle without necessary permit—Transportation agents—Oral and written assurance as to existence of permit obtained from driver—Road and Rail Traffic Act, 1933 (23 *and* 24 *Geo.* 5, *c.* 53), *s.* 9 (1).

CASE STATED by Newport borough justices.

At a court of summary jurisdiction at Newport an information was preferred by the respondent, James Arthur Brodie, a police officer, charging the appellants, Davies, Turner & Co., Ltd., transportation agents, with aiding, abetting, counselling and procuring one Arthur Vincent Hill on April 26, 1954, in the commission of the offence of using a goods vehicle with an " A " licence without the necessary permit to carry the particular load being carried on that day, contrary to s. 9 (1) of the Road & Rail Traffic Act, 1933.

According to the facts found by the justices, on October 29, 1953, a goods vehicle belonging to Messrs. Hills Transport and driven by one Durrance had been taken to Newport. The vehicle was entitled to operate without a permit only within an area of 25 miles from Leicester, and the driver, in order to have a load available for the return journey, had gone to the appellants and arranged for the carriage of a load of steel from Cardiff back to Leicester. That particular load required a permit for the vehicle in question. The owners of the vehicle were also in possession of three vehicles which did not require permits and up to a few days before October 29, 1953, Durrance had been driving lorries which did not require permits and had from time to time obtained loads from the appellants for return journeys. On the day in question Durrance, on going to the appellants' premises, was asked by Evans, the Cardiff manager of the appellants' business, if he had a permit for the particular load. Durrance replied in the affirmative, but could not produce the permit, and Evans accordingly required him to sign, and he did sign on behalf of his employers, a document in these terms : " Goods are handed to you on your express assurance that you hold the necessary documents and will produce them if required to and on the express condition that you are legally able to collect and effect delivery to the destination." There was, in fact, no permit in existence for the carriage of the particular load of goods in the lorry.

The justices were of opinion that the appellants were guilty of the offence charged, because they gave the order for the carriage of the goods without requiring the production to them of the permit or authorization of such carriage and without making proper or sufficient enquiry as to the necessity for or existence of such permit or authorization. They, accordingly, convicted the appellants, who appealed.

Held, distinguishing *Carter* v. *Mace* (1949) 113 J.P. 527, which was decided on its own facts and did not lay down any principle of law, that the appellants, having taken reasonable precautions, inquired about the existence of a permit, and received assurances regarding it both orally and in writing, had no reason to suppose that the facts were present which would constitute an offence, and could not be held to have aided and abetted the offence in question. The conviction must, therefore, be quashed.

Counsel : *Dare*, for the appellants ; *J. P. Ashworth*, for the respondents.

Solicitors : *Coward, Chance & Co.* ; *Treasury Solicitor.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

October 21, 1954

LOVELACE *v.* DIRECTOR OF PUBLIC PROSECUTIONS

Theatres—Unauthorized addition to play—Theatre licensee charged with unlawfully causing play to be presented—Departure from stage directions by actor contrary to licensee's orders—Theatres Act, 1843 (6 *and* 7 *Vict.*, *c.* 68), *s.* 15.

CASE STATED by the Liverpool stipendiary magistrate.

At the Liverpool stipendiary magistrate's court an information was preferred by the respondent, the Director of Public Prosecutions, charging the appellant, James Lovelace, licensee of the Pavilion Theatre, Liverpool, with unlawfully causing to be presented on November 2, 1953, part of a stage play entitled " The Respectable Prostitute," before such part had been allowed by the Lord Chamberlain, contrary to s. 15 of the Theatres Act, 1843.

The play, by Jean Paul Sartre, was one which had been authorized by the Lord Chamberlain for presentation in this country. The appellant, realizing that there might be objection taken if the stage

directions approved by the Lord Chamberlain were not strictly adhered to, having been warned by the police, and knowing that the police were visiting the play, took every precaution that he could take to warn the actors and to insist that they should adhere strictly to the text of the play and the stage directions. The stage direction at the end of the play was that the principal woman was to relax into the arms of the principal actor. The principal actor departed from the stage direction, and, contrary to the orders given to him by the appellant, laid the woman on a bed and went through motions which were objected to as indecent.

The actor in the present case had been charged and convicted of acting a part in a play not authorized by the Lord Chamberlain, but there was no appeal in his case.

Section 15 of the Act provides that " every person who for hire shall act or present, or cause to be acted or presented, any new stage play, . . . or any part thereof, until the same shall have been allowed by the Lord Chamberlain . . . shall for every such offence forfeit such sum as shall be awarded by the court in which . . . he shall be convicted."

The magistrate convicted the appellant and fined him £10. The appellant appealed.

Held, that, on a long line of authorities, even though the prohibition prescribed by the Act might be absolute, a person could not cause the act to be done unless he had knowledge of the facts. As there was in the present case no express or authoritative mandate given by the appellant to act that part of the play which had not been allowed by the Lord Chamberlain, the magistrate had come to a wrong decision, and the conviction must be quashed.

Counsel : *Crichton, Q.C.*, and *Kennan*, for the appellant ; *J. P. Ashworth*, for the respondent.

Solicitors : *Arthur Taylor & Co.*, for *Mace & Jones*, Liverpool ; *Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Lynskey and Parker, JJ.)

October 14, 1954

KEATS *v.* LONDON COUNTY COUNCIL

Town and Country Planning—Unpermitted development—Enforcement notice—Complaint by owner of premises to magistrate's court as person aggrieved—Desire to question validity of notice—Jurisdiction of magistrate—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 23 (2), (4).

CASE STATED by a metropolitan magistrate.

At a metropolitan magistrate's court a complaint was preferred by the appellant, Gerald Keats, that he was a person aggrieved by three enforcement notices served on him by the respondents, the London County Council, under s. 23 of the Town and Country Planning Act, 1947, on November 11, 1953, relating to the ground floor, first floor, and second floor of premises known as 127 Southgate Road, Islington.

With regard to the ground floor, the material facts were that on July 1, 1948, which was the " appointed day " under the Act, the use of the premises was residential. In the autumn of 1949 the premises were purchased by the appellant's mother and in October of that year a firm of builders went into occupation making window frames, sashes, and the like and continued to do so for about five weeks. That user, it was agreed, was user of the premises as a light industrial building within the meaning of the Town and Country Planning (Use Classes) Orders, 1948 and 1950. Thereafter, the premises were unoccupied for three months. On February 15, 1950, they were let to a firm of optical manufacturers, and they continued thereafter to be used for that purpose, which was also a light industrial purpose within the meaning of the orders. In March, 1951, the premises were sold to the appellant. The enforcement notice alleged that there had been carried out certain development after July 1, 1948, without the grant of permission by the respondents. The development was set out in sch. I to the notice as " beginning the use of the land described in the second schedule hereto for the purpose for which the same is now used, namely, as an industrial building within the meanings of the Town and Country Planning (Use Classes) Order, 1948, and the Town and Country Planning (Use Classes) Order, 1950." By sch. III he was required to discontinue and determine the use of the land for those purposes. Similar enforcement notices were served with regard to the first and second floor.

By s. 23 (2) of the Town and Country Planning Act, 1947, an enforcement notice shall specify the development which is alleged to have been carried out and may require the discontinuance of any use of land. By subs. (4) it is provided : " If any person on whom an enforcement notice is served under this section is aggrieved by the notice, he may, at any time within the period mentioned in the last foregoing subsection, appeal against the notice to a court of summary jurisdiction for the petty sessional division or place within which the land to which the notice relates is situated ; and on any such appeal the court—(*a*) if satisfied that permission was granted under this Part of this Act for the development to which the notice relates, or that no such permission was required in respect thereof, or, as the case may be, that the conditions subject to which such permission was granted have been complied with, shall quash the notice to which the appeal relates," and in any other case shall dismiss the appeal.

Before the magistrate it was contended on behalf of the appellant that the enforcement notices were invalid on the grounds (*a*) with regard to all three floors, that the description of the development was too vague, and (*b*) with regard to the ground floor and the first floor, that the notice wrongly described the development as " beginning the use of the land described in the second schedule hereto for the purpose of which the same is now used," inasmuch as the development under the Act had already taken place when the firm of builders first used the premises in October, 1949, seeing that the user by the optical manufacturers and the user by the builders fell within the same class. The magistrate held that his jurisdiction was strictly limited by s. 23 (4) of the Act of 1947 and that he could not question the validity of the notices. He, accordingly, dismissed the complaint. The appellant appealed to the district court.

Held, that the magistrate had come to a right decision, as he was bound to assume that the notices were regular, and that his sole jurisdiction was to determine whether permission was granted, if required, or whether it was not required. The appeals must, therefore, be dismissed.

Counsel : *Marshall, Q.C.*, and *F. R. McQuown*, for the appellant ; *Daniel*, for the respondents.

Solicitors : *J. C. Fox, Gamble & Son* ; *J. G. Barr*, solicitor to *London County Council.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

October 15, 1954

R. *v.* CITY OF LONDON LICENSING JUSTICES. *Ex parte* STEWART AND ANOTHER

Licensing—War damaged area—Planning removal—Requirement by licensing planning committee—Applicants to give written undertaking to justices as to no off-licence trade and limitation of bars—Refusal of justices to hear application—Mandamus—Licensing Act, 1953 (1 *and* 2 *Eliz.* 2, *c.* 46), *s.* 58 (2).

APPLICATION for order of *mandamus*.

The applicants, Hugh Dugan Stewart and Herbert William Chapman, who held a full on-licence at the Swan and Horseshoe, 32 Little Britain, in the city of London, applied to the licensing justices of the city of London for the grant to them of a planning removal, pursuant to s. 58 of the Licensing Act, 1953, to other unlicensed premises known as Dunster House Restaurant, Mark Lane, in the city. When the application had come, in the first instance, before the sub-committee of the licensing planning committee, the sub-committee recommended the full planning committee to grant the removal without any conditions, but when it came to the full planning committee for confirmation, the committee, while approving the removal, required the applicants to give a written undertaking to the licensing justices (*a*) to sell no intoxicating liquor under the licence for consumption off the premises, and (*b*) to provide only one bar for use by the general public and to close the same during the evening permitted licensing hours except during such times as the restaurant was used for organized functions to which admission was by special arrangement. The applicants gave a written undertaking to that effect to the justices. The justices were, however, of opinion that the licensing planning committee had no power to direct these conditions and declined to proceed with the hearing of the application, because they thought they had no power to grant the licence subject to the undertaking. The applicants obtained leave to apply for an order of *mandamus* directing the justices to hear and determine the application.

By the Licensing Act, 1953, s. 58 (2) : " Where proposals of a licensing planning committee that have been confirmed by the Minister provide for a planning removal, then, if the holder of the justices' licence applies to the licensing justices for the licensing district in which the premises to which it is intended to make the removal are situated, the justices shall grant a planning removal of the licence to those premises if they are satisfied that—(*a*) the premises are fit and convenient for the purpose, (*b*) the applicant is not disqualified by this or any other Act for holding a justices' licence and is in all other respects a fit and proper person to hold a justices' licence, and (*c*) any conditions specified in the proposals as confirmed have been complied with.

Held, that, the applicants having complied with the condition imposed by the licensing planning committee that they should give the written undertaking to the justices, the justices were not entitled to investigate whether the condition imposed by the committee was good or bad, and *mandamus* must, therefore, issue.

Counsel : *Viscount Hailsham, Q.C.*, and *Sidney Lamb*, for the applicants ; *Christmas Humphreys*, for the justices.

Solicitors : *H. H. Wells & Sons* ; *The Controller and City Solicitor.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

REGIONAL ORGANIZATION OF GOVERNMENT DEPARTMENTS

The Select Committee on Estimates in its sixth report considered the general question of the regional organization of government departments so as to ascertain whether they are unnecessarily large or extravagant and whether a consistent effort is made to maintain economy. Evidence was received from various quarters including each of the associations of local authorities. The County Councils' Association expressed the view that if the need for a regional organization is established it is important that the scope of its activities should be known and that the authority given should be both sufficient and sufficiently exercised to justify its existence. In the oral evidence given on behalf of the association it was stated that there is no useful purpose, in so far as the counties are concerned, in the continuance of the regional organization of the Ministry of Housing and Local Government in relation to planning matters. On the contrary, the Rural District Councils' Association said that rural districts generally consider that regional organization should be retained as in their view, it serves a useful purpose, in that " they are easy to contact and that the personnel have been of great assistance on many occasions." It was said, on behalf of this association, that the officers of the regions are " very agreeable and helpful." The Association of Municipal Corporations re-iterated the view of the local government side of the Local Government Manpower Committee that either more power should be given to regional organizations or they should be abolished. It was stated that the boroughs prefer, in peace-time, to deal with the headquarters of the Ministry direct. In arguing for their abolition it was suggested that local authorities should be given a greater proportion " of the small amount of power which is given to the regional officers of the Ministry of Housing and Local Government." In so far as the Ministry of Health is concerned there is now no decentralization of detailed administrative control to regional officers nor any delegation of executive authority or powers of approval. The officers in the regions are few in number and are for the purpose of liaison or advice.

The select committee, in its report, accepted as inevitable that government departments which must maintain a series of local offices should have a regional organization of some kind. This applies especially to the social service departments and the committee was satisfied that they are not unnecessarily large or extravagant and that a constant effort is made to maintain economy. The regional organization of other departments was either created during the last war, as a result of war-time conditions, or those of ministries such as Housing and Local Government, although new in form are in fact portions of pre-war and war-time departments and have followed similar patterns. The remaining departments which maintain regional organizations do so either for the purpose of administering controls or for advisory purposes. The select committee recognized that there was a danger that organizations which administer controls may continue by their own momentum after the reason for their existence has ceased and recommends that the Treasury should keep this aspect under review. Generally the evidence given to the select committee seemed to show that departments are not maintaining regional organizations without good reasons but that of the Ministry of Agriculture and Fisheries presented greater difficulties. The committee found it to be so complicated that " it might be called not one organization but several, which may result in overlapping, inefficiency and waste." Serious criticisms were made of this department, particularly by the County Councils' Association, who suggested that there is duplication of work and unnecessary interference with the work of local authorities. The select committee was not able to come to any considered conclusion on the evidence given and suggested that the regional activities of this Ministry should be the subject of a special inquiry by the committee of the next session.

THE ANNUAL REPORT OF THE COMMISSIONERS OF PRISONS

The report of the Commissioners of Prisons for 1953 shows that the trend of the prison population during the year was downwards from a peak of about 24,000 in March it fell gradually to about 23,500 during the summer and to about 23,000 by the end of the year. As a result, the number of men sleeping three in a cell was reduced from 5,638 to 4,175. This very undesirable practice is confined to local prisons. Three more prison camps were opened, and the possibility of establishing further open institutions for elderly and infirm prisoners is being explored. The rise in the number of receptions of men sentenced to imprisonment without the option of a fine still continued, but at a lower rate than in previous years. There was a further fall in the number of sentences to corrective training. Sentences to borstal training again increased and also committals for offences against the intoxicating liquor laws. Sentences for periods not exceeding 14 days accounted for 9·4 *per cent.* of receptions of men and 17·7 *per cent.* of women.

The number of persons of the age of 16 and over but under 21 found guilty of indictable offences was 17,026 males and 2,474 females which is higher than in either of the two previous years but slightly less than the average for 1940-1949. Attention is, however, drawn to the striking reduction since 1948 in the sentences of imprisonment of young offenders which may be ascribed to the operation of s. 17 of the Criminal Justice Act of that year. Nevertheless it is pointed out that the position cannot yet be regarded as satisfactory when 328 boys were sentenced to imprisonment who had no previous proved offence and some 600 had sentences of not more than three months. The Commissioners hope that the opening of a detention centre for boys over 17 years of age will help to reduce the number of " those deplorable short sentences of imprisonment of young people." A substantial number of young people are remanded to prison before conviction and subsequently dealt with otherwise than by committal to prison on conviction. There are also those who are received in prison after conviction but not under sentence of borstal training or imprisonment. The Commissioners consider that it is unfortunate " that economic conditions have prohibited the provision of remand centres envisaged by the Act of 1948 " which would remove the greater part of these young people from prison.

Turning to the help given to prisoners after release it is mentioned that a beginning was made in this " most thorough-going " experiment in " pre-release treatment " which has hitherto been tried. Five men from Parkhurst prison, all of whom were serving sentences of at least five years' preventive detention, arrived in Bristol to take up residence in a hostel specially built in the grounds of Bristol prison. With the co-operation of the Ministry of Labour and National Service, the central after-care association and the principal probation officer for Bristol and after months of careful preparation the five men were at once placed in work in the city. Each man draws his own wages at his place of work out of which he is charged a fixed sum for his board and lodging. He is allowed reasonable expenses for travelling, meals and personal expenditure; and is required to make provision for dependants previously receiving national assistance. The remainder of his wages is retained as compulsory saving against his final discharge. The men do not come in contact with the other prisoners at any time but they live and work as free men and the only sanction against misbehaviour is return to Parkhurst. The Commissioners regard this experiment with " both hope and pride." It is in its early stages and is confined to men who are selected after having been at least three months in the third stage of their sentence of preventive detention but the men's reaction is described as " magnificent." Once the hostel has been firmly established and a tradition created the Commissioners hope to extend the experiment to include other recidivist prisoners.

Treatment and Training.

Experience gained from the granting of home leave on parole to star prisoners in three central prisons was so satisfactory that the Commissioners were able to extend the privilege to all star prisoners in both central and regional training prisons and to all prisoners in the open regional training prisons whether star or not. All reports have shown the immense value of this practice and there has not been a single case of a prisoner failing to return by the stipulated time. In the section of the report dealing with the education of prisoners the necessity of teaching reading and writing is emphasized as so many men immediately on reception are found to be illiterate. Of particular interest are the pre-release courses which in the training prisons are made available for men nearing their date of release. At one corrective training prison the local authority provide speakers who explain the functions of their departments and how the ratepayers benefit by making proper use of them. A marriage guidance council holds a session as do representatives of the churches. There was an unusually large number of additions during the year to the libraries taken over by public libraries. Many county librarians take a great interest in the scheme and make a point of visiting the prison library or arranging for one of their staff to do so.

An appendix to this part of the report contains extracts from the chaplain's report on the courses of training for neglected mothers at Birmingham prison showing the helpful co-operation in this matter of the Discharged Prisoners' Aid Society and the W.V.S. prison probation service coupled with after-care by the local authority through their health visitors. After the return home of the prisoner, a representative of the W.V.S. calls to give friendly advice to the women and there is also early contact with the local authority which has been caring for her

children whilst she has been in prison. The whole of the extracts from the chaplain's report are worth study as showing how well this valuable experiment is working.

EAST HAM WEIGHTS AND MEASURES REPORT

During the whole of the year ended March 31, 1954, only 16 people were prosecuted in respect of alleged offences coming to the notice of the weights and measures department for the county borough of East Ham. Of these prosecutions, 12 related to coal, which seems, according to most reports, to be the principle cause of complaint. There were three prosecutions in respect of the sale of bread, and one against a timber merchant was brought under the Merchandise Marks Act and resulted in a dismissal.

Mr. Leonard E. Kirk, the chief inspector, shows how a small deficiency in weight oft repeated can result in a considerable profit to the vendor. He gives an example : " A trader is convicted for selling ham two drams deficient in weight. Now two drams is ¼th of an ounce and might seem a negligible amount for a prosecution, but two drams represents ½*d.* in value. One hundred sales a day with these " negligible deficiencies " could make 25*s.* illegal profit per week at the expense of the customer." Mr. Kirk refers to the record of a case in 1361 when a corn chandler was condemned to the pillory for displaying bad corn for sale covered up with a top layer of good corn, and comments " quite in the manner of some present day traders who display sound fruit with the unsound discreetly hidden at the back."

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 91.

A NATIONAL SERVICEMAN IS SHARPLY PUNISHED

A 22 year old driver living near Dewsbury appeared before Mr. Ralph Cleworth, Q.C., the learned stipendiary magistrate for Leeds, recently, to answer a charge that being a man serving in the Territorial Army for a term of part-time service he had failed without reasonable excuse to comply with a training notice served upon him under s. 5 of the National Service Act, 1948, contrary to s. 5 (4) of that Act.

For the prosecution it was stated that the defendant was 21 days in arrears with his territorial training and that unless early action was taken the Army would be unable to ensure that defendant would complete his National Service obligations.

The adjutant of the unit concerned when giving evidence as to the general Army character of the defendant, informed Mr. Cleworth that without regard to the penalty to be imposed, he had instructions to serve immediate notice upon the defendant, calling upon him to rejoin for 21 days' service on a specified date, the attachment to be to a regular Army unit.

The stipendiary magistrate, in fining the defendant £18, and ordering him to pay £2 2*s.* costs, said that he regarded the case as a serious one. The fine imposed was to mark the gravity of the offence, and to show others that it was one which could be severely dealt with.

COMMENT

On the whole, offences of this nature are few and far between, and as the learned magistrate said in the case reported above, this means that most men undertake their duties and responsibilities, and that it is unfair for some men not to do their fair share as it puts a burden on others. It is gratifying to note that a substantial fine was imposed on the defendant and one which approached the maximum of £25 permitted to a court of summary jurisdiction.

(The writer is indebted to Mr. T. C. Feakes, clerk to the Leeds justices, for information in regard to this case.) R.L.H.

No. 92.

CONTEMPTIBLE DECEPTION

A maintenance fitter appeared before the Sheffield magistrates recently, charged first with larceny as servant of a tool, value 11*s.* 6*d.*, and secondly for the purpose of procuring a marriage between himself and a 20 year old girl, knowingly signing a false declaration relating to marriage required under s. 28 of the Marriage Act, 1949, contrary to s. 3 of the Perjury Act, 1911.

The defendant was acquitted upon the first charge and upon the second charge it was stated that defendant, a man of 23 and the father of two children, who was legally separated from his wife, posed as a single man to a Sheffield girl and was accepted by her parents. The two kept company since the end of 1953 and had agreed to marry on September 22 last.

On September 20, a detective sergeant called at defendant's lodgings in connexion with the first charge and learnt that he had left them. At the girl's home he learnt of the wedding arrangements, but fortunately the detective sergeant knew that defendant was already married. The girl collapsed in a faint when told the position.

The defendant, who pleaded guilty to the charge, was fined £10.

COMMENT

Section 3 of the Perjury Act, 1911, provides that on indictment a person who knowingly makes a false statement for the purpose of procuring a marriage may be punished with seven years' imprisonment and, by virtue of s. 28 of the Criminal Justice Act, 1925, the offence may be punished on summary conviction by a fine of £50.

(The writer is indebted to Mr. Leslie M. Pugh, clerk to the Sheffield justices, for information in regard to this case.) R.L.H.

No. 93.

TRACTOR OIL IN TAXI CABS CAN PROVE EXPENSIVE

A taxi proprietor who, in the words of defending counsel " Got the shock of his life by having a whole fleet of taxis seized," appeared before the Sunderland county borough justices on October 4 last to answer unusual charges relating to fuel. The first charge alleged that defendant had mixed heavy oils, in respect of which a rebate of duty had been granted, with light oils without a licence granted by the Commissioners of Customs & Excise, contrary to s. 208 (2) of the Customs & Excise Act, 1952. Defendant was further charged with using such heavy oils as motor fuel in respect of seven of his taxis, contrary to s. 200 (3) of the same Act ; there were seven charges of this nature.

For the prosecution, it was stated that at the time of the offences, defendant owned a farm at East Herrington and was allowed a quota of heavy oil exempt from the duty of 2*s.* 6*d.* a gallon, as fuel for a tractor. The heavy oil had cost defendant 1*s.* 3½*d.* a gallon compared with at least 4*s.* a gallon for the cheapest grade of petrol. Defendant for some time had been in the habit of conveying quantities of the heavy vaporizing oil to his garage, where he mixed it with lubricating oil, and added the mixture to his petrol store.

Analysis by the government chemist, said the prosecutor, disclosed the presence of 15 *per cent.* vaporizing oil in the store and a similar amount in the petrol tanks of each of defendant's seven taxis. The defendant, when challenged, said that he had acted as he had because of the poor state of the engines of the taxis.

The defendant's seven taxis had been seized by the prosecution under powers conferred by s. 277 of the Act and subsequently released to him on payment of £75 in respect of each vehicle. Defendant had also bought back from the Commissioners 200 gallons of the mixture of light and heavy oil which had been confiscated.

For the defendant, who pleaded guilty to all charges, it was stated that he was unaware that he was committing any offence and that, as he had now disposed of his farm, there was no risk of any repetition.

Defendant was fined £75 on the first charge and £25 on each of the other charges— a total of £250.

COMMENT

The writer believes that convictions under s. 208 of the Customs & Excise Act, 1952, are rare, but it is obvious from the facts set out above that substantial savings can be made by a wrongdoer, and it is therefore appropriate that when offences of this nature, which are difficult to detect, are discovered, that they should be heavily punished.

Section 208 (1) of the Act prohibits any person from mixing any heavy oil in respect of which a rebate has been allowed with any light oil except under a licence granted by the Commissioners and after paying an amount equal to the rebate allowed. A proviso limits the subsection to fuel oils, gas oils and kerosene. Subsection 208 (2) provides that an offender shall be liable to a penalty of three times the value of the oil mixed or £100, whichever is the greater, and renders the mixture liable to forfeiture.

Subsection 200 (3) provides that any person using heavy oils delivered for home use, for use as fuel for a vehicle unless duty is paid equal to the rebate on the allowed heavy oil shall be liable to similar penalties to those specified under s. 208.

(The writer is greatly indebted to Mr. J. P. Wilson, clerk to the Sunderland magistrates, for information in regard to this case.) R.L.H.

PENALTIES

Wrexham—October, 1954. (1) Permitting a girl of 16 to drive a car. (2) Permitting the car to be driven when uninsured. (1) Fined £5. (2) Fined £10 and disqualified for 12 months. Defendant, a man of 77.

Carlisle—October, 1954. Being in charge of dogs which worried a lamb. Two defendants, each fined £5.

Bristol—October, 1954. Failing to forward a quarterly purchase tax return to the authorities. Fined £20. Defendant company, printers, had a similar conviction recorded in October, 1952.

Bristol—October, 1954. Failing to pay insurance contributions in respect of himself and three employees. Fined £17, and to pay £5 5*s*. costs. To repay the contributions amounting to £223 at the rate of £1 10*s*. per week. Defendant, formerly a building sub-contractor, deducted the contributions from three workmen but did not pay them over. Defendant now earning £10 a week as a bricklayer.

Bognor Regis—October, 1954. (1) Altering a driving licence with intent to deceive. (2) Failing to comply with the conditions of a provisional driving licence. Fined a total of £21. Defendant, a man of 25, was at the time the offence was committed, a local police constable. He admitted the offences and had since resigned from the force.

Burnham-on-Sea—October, 1954. Failing to remove straw and manure from a cattle market. Fined £15.

Ealing—October, 1954. Assaulting a passenger. Fined 20*s*. and to pay £6 19*s*. costs. Defendant, a 22 year old bus conductress, tried to grab the money from a passenger who, with his wife, had to jump to get on the bus, and then told him to get off the bus. As he moved down the gangway defendant pushed him in the back and struck his face several times.

PERSONALIA

APPOINTMENTS

At the annual meeting and conference of the Society of Clerks of Urban District Councils, which was held on October 7 and 8, 1954, the following officers were appointed for the ensuing year :

President : G. Roy Jenkins, LL.B., clerk of the Nantyglo and Blaina U.D.C. Honorary Solicitor : F. Edwards, clerk of Esher U.D.C. Honorary Treasurer : J. Crabb, F.C.I.S., clerk of Newmarket U.D.C. Honorary Secretary : H. R. H. Smith, M.B.E., clerk of Egham U.D.C. Honorary Editor : P. Barnes, L.M.P.T.I., clerk of Hoylake U.D.C. Honorary Auditor : H. V. Hudson, A.I.M.T.A., clerk of Market Harborough U.D.C.

Mr. Harold Whetstone, deputy town clerk for Greenwich metropolitan borough council since 1942, has been promoted town clerk.

Mr. Iorwerth Ll. Thomas, assistant solicitor to Wrexham rural district council since October, 1950, has been appointed deputy clerk and solicitor to the council as from July 1, 1954, in succession to Mr. S. S. Higginson who retired on June 30, 1934, after completing over 45 years in the service of the council. Mr. Thomas was admitted in October, 1947.

Mr. Gordon Hewett Ramage, LL.B., has been appointed to the position of assistant solicitor in the town clerk's department of Walthamstow borough council, succeeding Mr. Timothy Traherne Corker, who is now in private practice. Mr. Ramage is at present assistant solicitor with the Bromley, Kent, borough council, and was admitted in June, 1949. Mr. Corker was admitted in June, 1947.

Mr. Robert Berwick Sayers has been appointed assistant solicitor to Portsmouth city council. Mr. Sayers was previously in a similar capacity with Bridlington, Yorks., corporation, and his immediate position prior to his new appointment was as assistant solicitor to Weston-super-Mare, Somerset, corporation. Mr. Sayers was admitted in January, 1950.

Mr. Lionel Turner has been appointed assistant clerk to the justices for Barrow-in-Furness and Lonsdale North. Mr. Turner is at present a member of the staff of a Barrow-in-Furness solicitor, and succeeds Mr. Ronald Wills, whose appointment as assistant court clerk at Sunderland was reported at 118 J.P.N. 656.

Mr. Albert Reginald Haigh has been appointed assistant official receiver for the bankruptcy district of the county courts of Cardiff and Barry, Pontypridd, Ystradyfodwg and Porth, Newport (Mon.), Blackwood, Tredegar and Abertillery ; the bankruptcy district of the county courts of Swansea, Aberdare, Bridgend, Merthyr Tydfil, Neath and Port Talbot ; and also for the bankruptcy district of the county courts of Carmarthen, Aberystwyth and Haverfordwest. This appointment takes effect from November 1, 1954.

RETIREMENTS

Mr. J. E. Ryall, chief constable for Somerset, is to retire on January 1 on health grounds.

OBITUARY

Mr. Thomas Blantyre Simpson, Q.C., M.A., LL.D., Sheriff of Perth and Angus since 1952, has died in Edinburgh, at the age of 62.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

EXTENSION OF LEGAL AID

The Attorney-General, Sir Reginald Manningham-Buller, told the Commons that the question of extending the application of the Legal Aid and Advice Act was receiving the close consideration of the Lord Chancellor, but he was not yet in a position to make a statement.

Mr. Elwyn Jones (West Ham S.) asked whether the Attorney-General was aware that at present some tenants who might well have good grounds for resisting notices of rent increases from landlords were unable or afraid to take appropriate action in the courts because of lack of means. Was it not time that some urgent step was taken to deal with that apparent denial of justice ?

In reply, Sir Reginald said he recognized that the passing of the Housing Repairs and Rents Act had strengthened the case for extending legal aid to the county courts.

Mr. M. Turner-Samuels (Gloucester) said that the magistrates' courts and the county courts were, relatively at all events, the poor man's courts ; and was it not right that legal aid and advice under the 1949 Act should be in force in the inferior courts to exactly the same effect as in the superior courts ?

The Attorney-General said he could not add to his reply.

Later, replying to an adjournment debate on the subject, Sir Reginald said there had been isolated criticisms of the legal aid system as it had operated up till now. One had to accept teething criticisms when a new scheme of that character was introduced, but, by and large, he believed that the recommendations of the Rustcliffe Committee, embodied as they were, in the 1949 Act, were on the right lines and that the teething troubles would disappear.

If a choice had to be made between extending legal aid to the county courts or to the magistrates' courts or to the extension of the advice centres, he would say that legal aid in the county courts should have priority. It did not seem to him to be very helpful if they instituted a legal advice system throughout the country and people were advised at the centres that they should take proceedings in the county courts and then there was no legal aid system available to assist them in those proceedings.

He fully recognized that the institution of the advice centres might lead to the diminution of litigation and the settlement of a lot of matrimonial disputes. There was a strong case for the implementation of the Act as a whole—now as in 1949—but the whole matter depended upon what the cost was estimated to be and the other claims upon the Exchequer in respect of any funds which might be available.

In the House of Lords, the Lord Chancellor stated that during the past financial year a grant in aid of £1,075,000 was made in respect of legal aid in civil proceedings in England and Wales, and 27,636 Civil Aid Certificates were issued. In the same period in Scotland a grant in aid of £135,000 was made in respect of legal aid in civil proceedings and 3,972 Legal Aid Certificates were issued. In the calendar year 1953, 5,113 Legal Aid Certificates, 6,555 Defence Certificates and 416 Appeal Aid Certificates were issued in criminal proceedings in England and Wales. Since the cost was borne out of local funds, the amount spent was not readily ascertainable. Statutory legal aid was not yet operative in criminal causes in Scotland but, in the financial year 1953-54, £8,000 was voted to enable the Law Society of Scotland to allocate honoraria to solicitors defending poor persons.

POOR PRISONERS' DEFENCE

Mr. C. L. Hale (Oldham W.) asked the Secretary of State for the Home Department in the Commons whether he was aware of the inadequacy of the present provisions for the defence of poor prisoners ; and what measures he was taking to inquire into or to remedy that matter.

The Secretary of State for the Home Department, Major Lloyd George, replied that in October, 1953, the fees payable to solicitors and counsel in criminal cases were increased by 50 *per cent*., and a new provision was introduced for the payment of a daily fee in case a trial at assizes or quarter sessions lasted for more than two full days. He had the question under review, but was not in a position to make any further statement.

MINOR TRAFFIC OFFENCES

Sir Leonard Ropner (Barkston Ash) asked the Secretary of State for the Home Department to make a statement on the findings of the Departmental Committee which was set up to consider the proposal to allow motorists admitting certain minor traffic offences to pay an agreed penalty without a magistrates' court hearing.

Major Lloyd George replied that the Departmental Committee was appointed as recently as October 12, 1954, and it was too early to form any estimate of when it was likely to submit its report.

MARRIAGE LAWS REPORT

The Attorney-General states in a written Parliamentary answer that the Royal Commission on the Marriage Laws is now drafting its report, but he could not say when it would be published.

ANIMAL ODYSSEY

Fantasies about beasts, birds, and fishes, in which they talk and behave like human beings, have delighted mankind at all epochs, from the subtle Serpent who tempted Eve and the Talking Ass of Balaam (*Numbers, cap.* 22); from the *Frogs*, *Wasps* and *Birds* of Aristophanes to the *Fables* of Aesop and La Fontaine; throughout the folk-lore and fairy-tales of all nations, and in the modern masterpieces of Maurice Maeterlinck, Lewis Carroll and Kenneth Grahame. Man is an incurable egoist, and projects his own image upon the animal kingdom; few writers have attempted to look at the human race from the animal point of view. It might have been thought that this habit of personification would result in a humanitarian attitude (in the best sense of the term) towards his fellow-creatures; but unfortunately there is little evidence of this. Of all the great world-religions only Buddhism preaches and practises equal compassion for all living things; even in our comparatively humane land cases of abominable cruelty are not uncommon; we have not yet reached that desirable stage of civilization under which the public conscience would demand protection for animals, wild as well as tame, no less comprehensive, and sanctions for their ill-treatment no less drastic, than those which the law provides in cases of violence against the person.

Human wickedness being what it is, we have found it consolatory and refreshing to read in *The Times* a dispatch from its Cairo correspondent. One swallow, says the proverb, does not make a summer; but every naturalist, and almost every schoolchild, knows that those of the species that spend the summer in northern lands migrate in flocks, when the European autumn approaches, to warmer southern climes.

Tennyson, in *The Princess*, seems to have prophesied more truly than he knew:

> "O tell her, Swallow, thou that knowest each,
> That bright and fierce and fickle is the South,
> And dark and true and tender is the North."

A recent seasonal migration from Hanover, in north-west Germany, was observed by Frau Eugenie von Ennich de Friesse, whose imposing name suggests an aristocratic lineage with a long devotion to the motto *noblesse oblige*. This lady, who practises as a veterinary surgeon, noticed that one member of the flock was weak and ill, and, being unable to fly with the rest, had missed the conducted tour to the sunny climate of Egypt. To a bird-lover nothing more pathetic can be imagined than this poor, solitary creature left behind by its fellows and abandoned to the rigours of the northern winter. It is pleasant to learn that Frau von Ennich's professional interest and human kindliness has manifested itself in a most practical way. Not only did she cure the bird of its indisposition, but she placed it in a cage and consigned it to the care of Scandinavian Air Lines, with a letter setting out the case-history and requesting the company's aid and comfort. An aircraft carried the swallow to Cairo, where an official, specially deputed for the task, took the cage to a quiet spot in the Andalusian Gardens and there released the bird. Thereafter he photographed the swallow in free and healthy flight, and despatched the picture to Hanover—a perpetual reminder of a noble deed and a shining example to us all.

Never, surely, since the gentle Francis of Assisi tended and preached to his brothers, the birds, has so charming a real-life episode been recorded. Many poets have written sympathetically of swallows on the wing, but we have never heard tell of a poet who helped one on its way. Noah, it is true, sent forth from the Ark a dove which, with innumerable other creatures, he had (at some considerable personal inconvenience from overcrowding) preserved from the Deluge; but this was in the nature of an experiment to test meteorological conditions in the Ararat region, and not from humanitarian motives.

That being said, there is, of course, nothing particularly incongruous in transporting a swallow by aeroplane; it is at any rate a medium well-suited to its usual element. Far different is the fate of those unhappy creatures whose normal *habitat* is on land, when they find themselves in the unfamiliar and restricted confines of aircraft's or ship's hold. Scarcely a week passes without some such item appearing in the press—leopards arriving by liner, cobras by Clipper, hippopotami by helicopter. Such modes of travel give the lie to the well-known couplet of John Hookham Frere, parodying the epigrammatic style of Alexander Pope:

> "The feather'd race with pinions skim the air—
> Not so the Mackerel, and still less the Bear!"

The Bear, because of his symbolic affiliations with Eastern Europe, has become a somewhat controversial figure, especially in those circles which centre in the Committee for Un-American Activities. That, perhaps, is the reason why a particularly fine specimen, which recently arrived in this country from the Chicago Zoo, was at first denied an import licence from the Board of Trade. We are not aware of any fiscal provision which imposes customs duty upon live bears, and can only conclude that questions of high policy are involved. These become apparent when it is remembered that the situation of the City of Chicago is perilously close to the border of the State of Wisconsin, which is represented in the Federal Senate by Mr. McCarthy. In these delicate circumstances it is easy to understand the British authorities' anxiety to assure themselves that no sinister attempt was being made, by over-zealous Americans, to deport and dump upon our shores an undesirable alien. It is good to know that the creature has now been admitted as "a *bona fide* gift" from Chicago to the Manchester Belle Vue Zoo. Thorough investigation of his antecedents has revealed him (like the Lion played by Snug the Joiner in *Pyramus and Thisbe*) as "a very gentle beast, and of a good conscience," cleared, presumably, of all suspicion of subversive tendencies.

This episode reads like a modern application of Cassandra's warning—

Timeo Danaos et dona ferentes;

we must all fervently hope that the Chicago Bear may not turn out to be a Trojan Horse in disguise, and that the pure air of Manchester Liberalism may suffer no contamination from any doubtful affinities which may lie concealed in his political past.

A.L.P.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Thursday, October 28

CIVIL DEFENCE (ARMED FORCES) BILL, read 2a.

EXPIRING LAWS CONTINUANCE (NO. 2) BILL, read 2a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—*Offences against—Buggery—Whether s. 40 of Children and Young Persons Act, 1933, applicable.*

In connexion with two pending charges of buggery. The respective victims are boys aged 14 and in each case the police desire to know whether they are entitled to exercise certain of the powers specified in s. 40 of the Children and Young Persons Act, 1933. It is noticed that the crime of buggery is not expressly mentioned in the first schedule to the Act though there is a reference in that schedule to s. 62 of the Offences against the Persons Act, 1861, which section deals with attempted buggery. Included in the schedule is also "any other offence involving bodily injury to a child or young person." In one of the pending cases the medical evidence is that the boy shows no indication of bodily injury. In the other case the only medical evidence is that there has been some stretching of the back passage. Can the powers conferred by s. 40 be exercised in either or both these cases?

SEMIRAMIS.

Answer.

As the boys are both under 16 they could not be taken as having consented to an indecent assault so as to provide a defence against such a charge. In a case of an alleged offence against s. 61 of the Offences Against the Person Act, 1861, involving a boy under 16, it would be appropriate to charge as an alternative the offence of indecent assault under s. 62, and thus the provisions of s. 40 of the Act of 1933 could be applied.

We should be inclined to regard the offence as one involving bodily injury, but cases dealing with that expression are not all consistent, *see Clarke Hall* and *Morrison's Law Relating to Children and Young Persons*, 4th edn., p. 109. It would be strange if the first schedule did not include the full offence, seeing that it includes the attempt.

2.—Costs—*Costs in Criminal Cases Act, 1952—Sections 5 and 6.*

At the magistrates' court, A is convicted of an indictable offence, tried summarily and is fined £X and the justices make an order under s. 6 for the payment of £Y in respect of costs which they consider to be "just and reasonable." £Y includes £2 for an ordinary non-professional witness. This amount is paid to the witness on the conclusion of the hearing out of local funds.

The defendant does not pay the fine or costs at the hearing. If the court had not ordered the defendant to pay the costs under s. 6 the witness would have been paid £1 (plus 5*s.* subsistence) provided he had lost wages by attendance pursuant to the regulations under s. 5 of the Act.

The following questions arise:

1. Should the witness's allowance have been entered as £2 on certificate "C" with a note attached to it to the effect that it is anticipated that the defendant will repay the amount?

2. If the costs are not eventually paid by the defendant, who bears the loss of £1?

SINIS.

Answer.

1. No, because, apart from subsistence, the maximum allowed under regulations is £1 and this maximum should not have been exceeded.

2. Local funds, as payment of £2 has actually been made, but it would not have been surprising if the local authority had declined to pay upon a certificate for a sum in excess of the maximum.

3.—Criminal Law—*Criminal Justice Act, 1948, s. 22—Prisoner twice previously convicted—Additional discharge followed by sentence.*

An accused person was on April, 1953, conditionally discharged for 12 months on a charge of obtaining credit by fraud. In July, 1953, the same person appeared before a different bench of magistrates charged with obtaining goods by false pretences and by consent the bench also dealt with the breach of condition and the accused was sentenced to six months imprisonment on each of three charges of obtaining goods by false pretences, these sentences to run concurrently, and to six months imprisonment for breach of condition, this sentence to be consecutive. The accused has now been again before the court which previously sent him to prison and has been committed for trial on charges of forgery. Notice pursuant to s. 23 of Criminal Justice Act, 1948, has been served upon him and it was thought that the court of trial might wish to exercise the powers conferred by s. 22 of the Act but having regard to *R.* v. *Stobbart* [1951] 2 All E.R. 753; and *R.* v. *Rodgers* [1953] 1 All E.R. 206; 115 J.P. 561, doubts have arisen as to whether s. 22 is applicable. What is the position please?

SENORAMIS.

Answer.

This case is distinguishable from the two cases cited. The defendant was convicted on two separate occasions namely in April and July. By reason of s. 12 (1) of the Criminal Justice Act, 1948, the former would not have ranked as a conviction for the purpose of s. 22, but for the fact that he was subsequently sentenced for that offence in accordance with s. 8. The fact that he was sentenced makes the April conviction count as one of two convictions on two previous occasions so that s. 22 does now apply. He has been convicted on two separate occasions, and he has been sentenced to imprisonment in respect of each conviction.

4.—Dogs—*Dangerous—Dog attacking another dog.*

The question has recently arisen as to the nature of the evidence required to prove that a dog is "dangerous." It has been argued that to prove that a dog is "dangerous" there must be evidence that the offending animal is dangerous to mankind, or to cattle, poultry, or sheep. In other words a dog cannot be "dangerous" to other animals such as a dog or cat.

Would you be good enough to let us have your learned opinion on this matter, bearing in mind the case of *Williams* v. *Richards* (1907) 71 J.P. 222. In discussing this particular case it has been suggested that the learned judge, in mentioning animals in his decision, intended to refer to such animals as were subsequently dealt with in the Dogs Act, 1906, or the Dogs (Amendment) Act, 1928.

SISYPHUS.

Answer.

The specific reference to cattle, poultry and sheep seems to imply the exclusion of other animals from the provisions of the section, so that a dog that attacks another dog or a cat cannot be dealt with as a dangerous dog for the purposes of an order to control. Such attacks would be evidence that would strengthen a case of an attack upon cattle, sheep or poultry.

5.—Local Government Act, 1933, s. 76—*Trader affected by general policy.*

In consequence of the decision of the Government to decontrol meat and livestock next July, local authorities have been requested by the Ministry of Food to ensure that adequate slaughtering accommodation will be available in advance of decontrol. Ten applications have been made to a district council by meat traders for the renewal of slaughter-house licences held before the war. One of these applicants is a member of the district council. It seems that such member has an obvious pecuniary interest, if present at a meeting of the council when his own application for a renewal of his licence is under consideration, and that he must therefore disclose that interest under s. 76 of the Local Government Act, 1933. It is not clear whether such member has a pecuniary interest when the general policy of renewing those licences is under consideration.

CHARON.

Answer.

Section 76 (2) contains a definition of an indirect interest, but we do not think the definition is exhaustive. The councillor in this case seems to have an indirect interest both in dealing with the applications of potential competitors and when the council is debating general policy: *cp.* the judgment of Lord Hewart, C.J., in *ex parte Chorley, R.* v. *Hendon R.D.C.* (1933) 67 J.P. 210. Upon the general policy it may be useful to hear his views, and, if this is the council's wish, they can apply to have his disability removed as regards taking part, without removal of the disability for voting.

[This question was answered by post in May. We print it now because we have just had another query upon indirect interest.—*Ed., J.P. and L.G.R.*]

6.—Local Land Charges—*Agricultural supervision order—Change of tenant.*

Supervision orders made under the Agriculture Act, 1947, are registrable in part IX and are governed by S.I. 1948, No. 281.

The registrar has also to enter in the register particulars of any variation or revocation of any supervision order. I have been asked by the local agricultural executive committee to delete a supervision order on the ground that owing to an approved change of occupation of the farm the order had lapsed. I can find no provision for registering a lapse. On bringing this to the notice of the agricultural executive committee I have been supplied with a notice of revocation of supervision order, but have been told that, generally, other local authorities have accepted a letter notifying a lapse.

Your opinion on the position will be appreciated.

ARGOS.

Answer.

We infer that this supervision order was an order relating to the occupier. If so, s. 14 of the Agriculture Act, 1947, seems to imply

that it ceases to be enforceable when a new occupier approved by the Minister takes the farm. If so the registrar should cancel the registration by virtue of r. 13 (2) of the Local Land Charges Rules, 1934. A formal revocation of the supervision order would be appropriate under s. 14 (3) of the Act of 1947, if the person on whom the order was made, being still in occupation, or a successor to whom, against whom the order had continued under s. 13, because he had not been approved, no longer needed supervision. The order although registrable (perhaps anomalously) as a local land charge, is personal, in relation to an owner or occupier, and its formal revocation is accordingly not provided for when (in case of an order on the occupier) a new occupier comes in with approval.

7.—Magistrates—*Practice and procedure—Preparation of informations and complaints—Whose responsibility?*

I shall be glad to have your esteemed views on the question of who is responsible for the preparation of informations and complaints.

The practice here is for the police and others to pass to my office the name, etc., of the defendant, the date of hearing required and brief particulars of the charge. It is then for my staff or myself to prepare the information and summonses. The drafting of the charge frequently entails reference to regulations and orders and often takes up a great deal of time.

It seems to me that it is for the prosecution to prepare the information or complaint and that it is unfair for the clerk to have to accept the responsibility for its correctness, which could lead to his being placed in an invidious position should objection be taken to it in court.

While I am quite willing to assist poor people applying for process, I am of the opinion that the police and other public bodies should be asked to draft their own informations.

Do you agree? J. PULAU.

Answer.

Section 1, Magistrates' Courts Act, 1952, confers jurisdiction to issue process "upon an information being laid before a justice." If a written information is required (as to this *see* r. 4 Magistrates' Courts Rules, 1952) the informant is responsible for preparing it. The same applies to a complaint made under s. 43. We think, however, that the informant or complainant cannot be called upon to prepare any summons or warrant which the justice issues after the information has been laid, or the complaint made, before him.

8.—Public Health Act, 1875, s. 146—*Agreement for deposit—Interest.*

The council wish to apply the provisions of the Public Health Act, 1875, s. 146, to several proposed streets within the borough, and the developers have agreed to enter into the agreement. The agreement provides firstly for the laying of the foundations of the carriageway, secondly for the erection of the houses, and thirdly for the completion of the carriageway and footpaths. One of the conditions of the agreement (to which the developer agrees) is that the developer shall deposit a sum of money with the council to secure the carrying out of the final works to the carriageway. The developer has, however, requested that the council pay interest on this sum at the rate of three *per cent. per annum*. There is, however, no provision in the Public Health Act, 1875, for the payment of interest on the sum deposited. The New Streets Act, 1951, provides for the payment of interest on the sum deposited, but for several reasons this Act is not applicable to the proposed streets. It does not appear that the council are legally entitled to pay interest on the above sum. Do you agree? DIOGENES.

Answer.

Section 146 is completely silent about the terms of the agreement; in particular, it does not mention a deposit. This being so, we think the parties are at liberty to agree on a deposit if they wish, and equally to agree how the deposit shall be made, including a provision about interest.

9.—Road Traffic Acts—*Vehicles (Excise) Act*, 1949—*Registration and Licensing Regulations—Failure to notify appropriate authority of change of ownership of vehicle—Venue.*

Referring to the article at 118 J.P.N. 510, and the conclusion that s. 283 of the Customs and Excise Act, 1952, applies to prosecutions under the Vehicles (Excise) Act, 1949, do you agree that s. 284 of the 1952 Act also applies and that the answers to P.P. 8, 115 J.P.N. 190 and P.P. 3, 118 J.P.N. 271 should be revised so that proceedings may be brought (*a*) where the defendant resides, or (*b*) where the offence was committed, *i.e.*, a place where the registration authority have their office? JUSTSO.

Answer.

We agree that s. 284 applies and that proceedings can be taken (*a*) where the person charged with the offence resides, or is found, or (*b*) where the offices of the appropriate registration authority are.

10.—Tort—*Obstruction of sewers—Exclusive remedy.*

A relatively short length of a sewer vested in my council was recently found to be blocked and when clearing operations were carried out approximately three cubic yards of material was removed. Three-quarters of this consisted of a mixture of sand and glass and the remainder consisted of pieces of rag, paper, and other similar matter, which would not in themselves have caused an obstruction but for the sand and glass which caused the silting up. This sand and glass was traced to the yard of an adjacent factory where a large pile of this mixture is stored in an open yard, and it appears to have been washed into the sewer by way of a drain in the yard, in consequence of rainfall and the occasional washing of the yard. It is admitted by the management that the sand and glass removed originated from their yard. It is appreciated that a prosecution under s. 27 Public Health Act, 1936, might be instituted against the firm concerned, but it is desired to obtain, if possible, reimbursement of the cost of clearing the sewer which amounts to a sum in the region of £75. It appears that the only remedy of the council is a civil action based on nuisance and/or negligence, but the chances that such an action would succeed appear problematical.

I should appreciate your views on (1) the advisability of bringing such an action and (2) any other remedies which may be available to the council. BLOCAT.

Answer.

Where Parliament has imposed a penal sanction, it is a question of construction whether it intends to take away the common law remedy in damages. In analogous matters most of the decided cases have been by private persons, against public authorities or other private persons, but we see no reason in principle against the council's seeking damages here. In *A.-G.* v. *Sharp* (1931) 94 J.P. 234, an injunction was granted to restrain continuing breach of a statute, on the ground that the breach might be lucrative, and the fine imposed by the statute was not a sufficient deterrent. In the case before us, there is no room for an injunction, nor is the daily penalty under s. 27 applicable. It can well be argued that Parliament did not intend, when it imposed a fine upon an occupier of property who puts deleterious matter into a sewer, to confer upon him incidentally a right to do this, at great cost to the ratepayers at large, and at no cost to himself beyond a fine of £10. The argument may not succeed, but it is worth trying.

COUNTY COUNCIL OF DURHAM

ASSISTANT SOLICITOR required. Salary will be within A.P.T. Grades VA—VII (£650—£810) (as from January 1, 1955, within the scale £675—£825).

The successful candidate will be required to pass a medical examination.

Applicants should state whether to their knowledge they are related to any member of the Council or to the holder of any senior office under the Council.

Canvassing will disqualify.

Applications, with names of two referees, should reach the undersigned by Saturday, November 27, 1954.

J. K. HOPE,
Clerk of the County Council.

Shire Hall,
Durham.

ROYAL BOROUGH OF NEW WINDSOR

Deputy Town Clerk

APPLICATIONS are invited from solicitors, preferably with local government experience, for this appointment within the range of A.P.T. Grades VII and VIII (£735—£860), according to qualifications and experience. Housing accommodation is available if necessary.

Further particulars and application form may be obtained from the undersigned. Closing date November 20, 1954.

J. E. SIDDALL,
Town Clerk.

Municipal Offices,
Kipling Memorial Building,
Windsor.

URBAN DISTRICT OF ENFIELD
(Population 111,000)

Appointment of Second Assistant Solicitor

APPLICATIONS are invited for the above appointment.

Salary : (*a*) After admission and on first appointment—A.P.T. Grade V (*a*) £650—£710 plus London Weighting.

(*b*) After 2 years' legal experience from date of Admission — A.P.T. Grade VII £735—£810 plus London Weighting.

The above Salary Scales are subject to the National Joint Council's decisions of August 31, 1954, which will be implemented from January 1, 1955.

Full particulars and Forms of application may be obtained from the undersigned. Closing date for applications Monday, November 15, next.

Canvassing either directly or indirectly will disqualify.

CYRIL E. C. R. PLATTEN,
Clerk of the Council.

Public Offices,
Enfield.
October 25, 1954.

COUNTY BOROUGH OF BOURNEMOUTH

ASSISTANT SOLICITOR (Established) required, salary within A.P.T. Grades VIII-IX £785—£960. Applications, with names of two referees, to reach me by November 20, 1954.

A. LINDSAY CLEGG,
Town Clerk.

CITY OF WORCESTER

Appointment of Chief Constable

APPLICATIONS are invited for the above appointment at a salary of £1,200 × £50 to £1,350 together with a car allowance and other usual allowances.

The appointment is subject to the Police Regulations for the time being in force and to the passing of a medical examination. The successful candidate will be required to reside within the City and a house is available.

Applications, together with the names of three referees, must be endorsed "Chief Constable" and received by the undersigned by November 20, 1954.

BERTRAM WEBSTER,
Town Clerk.

Guildhall,
Worcester.

BOROUGH OF POOLE
(83,520)

Second Assistant Solicitor

SALARY in new Grade A.P.T. V (£750—£900) and on N.J.C. conditions. Good experience of conveyancing and some advocacy essential ; local government experience desirable. Subject to Superannuation Acts and medical examination. Housing available. Applications, on forms supplied, and with three referees, should reach me by November 17, 1954.

WILSON KENYON,
Town Clerk.

Municipal Buildings,
Poole, Dorset.

REGISTER OF LAND AND ESTATE AGENTS, AUCTIONEERS, VALUERS, AND SURVEYORS

BERKSHIRE

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CORNWALL

FALMOUTH.—ROWE & KNOWLES, Strand, Falmouth. Tel.: 189 and 1308.

DEVON

AXMINSTER.—ARNOLD L. BALDOCK, B.Sc., A.R.I.C.S., Chartered Surveyor, Valuer, Land Agent, Shute, Axminster. Tel. 2388.

EXETER.—RIPPON, BOSWELL & CO., F.A.I., 8 Queen Street, Exeter. Est. 1884. Tels. 3204 and 3592.

EXMOUTH.— PURNELL, DANIELL & MORRELL, 7 Exeter Road. Tel. 3775. Auctioneers and Estate Agents; Surveyors and Valuers. Also at Honiton and Sidmouth.

ESSEX

ILFORD AND ALL ESSEX.—RANDALLS, Chartered Surveyors, Auctioneers, Valuers, 1 Medway Parade, Cranbrook Rd., Ilford. Est. 1884. Tel. ILFord 2201 (3 lines).

GLOUCESTERSHIRE

CIRENCESTER AND COTSWOLDS.—HOBBS & CHAMBERS, F.R.I.C.S., F.A.I., Market Place, Cirencester. (Tel. 62/63) and Faringdon, Berks.

HERTFORDSHIRE

BARNET & DISTRICT.—WHITE, SON & PILL, 13/15 High Street. Tel. 0086, and at New Barnet.

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